

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 Appropriations

BILL: CS/SB 7024

INTRODUCER: Appropriations Committee and Environment and Natural Resources Committee

SUBJECT: Department of Environmental Protection Citizen Support Organizations

DATE: March 29, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Anderson</u>	<u>Rogers</u>		EN Submitted as Committee Bill
1.	<u>Reagan</u>	<u>Betta</u>	<u>AEG</u>	Recommend: Favorable
2.	<u>Reagan</u>	<u>Kynoch</u>	<u>AP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7024 deletes the scheduled repeal of provisions governing citizen support organizations established under the Department of Environmental Protection (DEP), allowing the existing citizen support organizations (CSO) to continue operating and providing benefits to the department.

The bill requires the department to submit a report to the President of the Senate and the Speaker of the House of Representatives that examines the financial transparency, accountability, and ethics of those CSOs with annual expenditures of more than \$300,000 and those CSOs under the Florida Coastal Office, as of November 1, 2018.

The report must include audits for the last three fiscal years for any CSO that is subject to the statutory requirement for an audit. Of the department's 96 CSOs, this requirement only includes those with annual expenditures of \$300,000 or more. The report must demonstrate that CSOs under the Florida Coastal Office, as of November 1, 2018, comply with statutory requirements.

The report must identify any of the department's CSOs included in the report that are not in compliance with statutory requirements and describe whether the department has terminated its contracts with those organizations.

The report must also demonstrate how the contracts between the DEP and its CSOs have been revised to comply with all relevant provisions of law.

The bill has no fiscal impact on state funds.

The bill takes effect July 1, 2019.

II. Present Situation:

Citizen Support Organizations and Direct-Support Organizations

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily authorized or 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.¹ The functions and purpose of a CSO or DSO are prescribed by its enacting statute and, for most organizations, by a written contract with the agency the CSO or DSO was created to support.

Section 20.2551, F.S., governs CSOs that support the Department of Environmental Protection (DEP) and its programs. Section 258.015, F.S., governs CSOs that specifically support the Division of Recreation and Parks within the DEP.

CSO and DSO Transparency and Reporting Requirements

In 2014, the Legislature created s. 20.058, F.S., establishing a comprehensive set of transparency and reporting requirements for CSOs and DSOs that are created or authorized pursuant to law or executive order and created, approved, or administered by a state agency.² Specifically, the law requires each CSO and DSO to annually submit, by August 1, the following information related to its organization, mission, and finances to the agency it supports:³

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the organization;
- 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 (IRS) Return of Organization Exempt From Income Tax form (Form 990).⁴

Each agency receiving the above information must make the information available to the public through the agency's website.⁵ If the CSO or DSO maintains a website, the agency's website must provide a link to the website of the CSO or DSO.⁶ Additionally, any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting and posting the

¹ See ss. 258.015(1) and 257.43(1), F.S. Specific CSOs and DSOs are granted the authority to operate and conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer funds and property; and make expenditures.

² Chapter 2014-96, Laws of Fla.

³ Section 20.058(1), F.S.

⁴ 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.

⁵ Section 20.058(2), F.S.

⁶ *Id.*

information.⁷ 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.⁸ 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.”⁹

By August 15 of each year, the 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 CSO or DSO.¹⁰

Lastly, a law creating or authorizing the creation of a CSO or DSO must state that the creation or authorization for the CSO or DSO is repealed 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, 2019.¹¹

CSO and DSO Audit Requirements

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, except for the CSOs for the DEP, which are not required to provide for an audit unless annual expenditures are \$300,000 or more.¹² 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 Auditor General has adopted the Government Auditing Standards as the standards for audits of nonprofit and for-profit organizations.¹³ 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 conduct audits or other engagements of the accounts and records of the CSO or DSO, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee.¹⁴ The Auditor General is authorized to require and receive any records from the CSO or DSO, or its independent auditor.¹⁵

CSO and 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 statutory standards of conduct and

⁷ Section 20.058(4), F.S.

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 20.058(3), F.S.

¹¹ Section 20.058(5), F.S.

¹² 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.

¹³ Rule 10.651(4), Rules of the Auditor General.

¹⁴ Section 11.45(3)(d), F.S.

¹⁵ *Id.*

disclosures.¹⁶ 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.¹⁷

Department of Environmental Protection

The DEP is the state's lead agency for environmental management and stewardship, protecting air, water, and land in the state. The DEP's Land and Recreation programs, including the Division of Recreation and Parks, acquire and protect lands for preservation and recreation. The DEP's Ecosystem Restoration programs protect and improve water quality and aquatic resources, including Florida's coastal resources, which are coordinated through its Florida Coastal Office.

Department of Environmental Protection CSOs

A DEP CSO must be a Florida corporation not for profit, incorporated under ch. 617, F.S.¹⁸ The DEP or the Division of Recreation and Parks must determine that the CSO is consistent with the DEP or the state park system's goals and the best interests of the state and provide in a letter of agreement its written approval of the CSO to operate for the direct or indirect benefit of the DEP or the state park system or its individual units.¹⁹

The CSOs are organized and operated to conduct programs and activities; raise funds; collect and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer in its own name securities, funds, or real personal property; and make expenditures for the benefit of the DEP or the state park system or its individual units.²⁰ However, CSOs must not receive funds from the DEP by grant, gift, or contract unless specifically authorized by the Legislature.²¹ Statutory requirements and Auditor General rules require an annual audit be conducted in accordance with Government Auditing Standards for the DEP's CSOs with annual expenditures above \$300,000.²²

The DEP may permit its CSOs to use the DEP property, facilities, and personnel free of charge, as long as such use is in keeping with the approved purposes of the CSO and does not unreasonably interfere with normal operations.²³ The CSO's use of state property must provide for equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.²⁴

The DEP holds agreements with 96 CSOs. Eighty-three CSOs support the Division of Recreation and Parks and 13 CSOs support the Florida Coastal Office.²⁵ The statutes that authorize the

¹⁶ Sections 112.313 and 112.3143(2), F.S.

¹⁷ Section 112.3251, F.S.

¹⁸ Sections 20.2551(1)(a) and 258.015(1)(a), F.S.

¹⁹ Sections 20.2551(1)(c) and (d) and 258.015(1)(c) and (d), F.S.

²⁰ Sections 20.2551(1)(b) and 258.015(1)(b), F.S.

²¹ Section 20.2551(1)(b), F.S.

²² Sections 20.2551 and 215.981(2), F.S.

²³ Sections 20.2551(2) and 258.015(2), F.S.

²⁴ *Id.*

²⁵ Department of Environmental Protection, *Citizen Support Organization Reports*, <https://floridadep.gov/comm/comm/content/citizen-support-organizations-reports> (last visited Feb. 6, 2019) [hereinafter *DEP CSO Reports*].

CSOs for the DEP generally and for the DEP's Division of Recreation and Parks are repealed October 1, 2019, unless reviewed and saved from repeal beforehand by the Legislature.²⁶

Division of Recreation and Parks

The Division of Recreation and Parks, or the Florida Park Service, is one of the largest park systems in the country with 175 state parks, trails, and historic sites.²⁷ The park system includes nearly 800,000 acres of land and 100 miles of beaches. Florida's state park system offers year-round outdoor activities to citizens and visitors of all ages and provides education about the state and its natural diversity.

CSOs provide numerous benefits to the DEP including fundraising, programs, activities, services, and volunteer time to assist in park operations. CSOs provide important financial support that is used by parks to purchase equipment, improve facilities, develop exhibits, and provide other enhancements to the parks. CSOs provide community outreach and educational activities to children and adults. CSOs also often provide staff assistance and volunteers when needed by state parks.²⁸

The Florida State Parks Foundation is a CSO that benefits the park system statewide through preservation and protection of parks, children's education, community engagement, and financial support.²⁹ Other CSOs benefit individual state parks by generating additional resources and support for the park. Many of these CSOs sponsor and organize events and activities, such as guided walks, kayak tours, and cultural festivals that bring visitors to the parks.

Examples of the important benefits CSOs have provided to state parks are completing significant upgrades to river boats in Wakulla Springs State Park,³⁰ maintaining campground laundry facilities at Florida Caverns State Park,³¹ and providing trail interpretive booths at Paynes Prairie State Park.³² Other CSOs host large events, such as the Florida Springs Fest at Silver Springs State Park, which brings music, entertainment, guest speakers, scientists, artists, and activists to the park for a two-day festival that educates visitors about Florida's springs.³³

²⁶ Sections 20.2551(6) and 258.015(4), F.S.

²⁷ Florida Department of Environmental Protection, *Division of Recreation and Parks*, <https://floridadep.gov/parks> (last visited Feb. 6, 2019).

²⁸ Florida State Parks, *Friend Groups*, <https://www.floridastateparks.org/friend-groups> (last visited Feb. 6, 2019).

²⁹ Florida Department of Environmental Protection, *Florida State Parks Foundation*, <https://www.floridastateparks.org/parks-and-trails/florida-state-parks-foundation> (last visited Feb. 6, 2019).

³⁰ Florida State Parks, *Friends of Wakulla Springs State Park*, <https://www.floridastateparks.org/parks-and-trails/edward-ball-wakulla-springs-state-park/friends-wakulla-springs-state-park> (last visited Feb. 6, 2019).

³¹ Florida State Parks, *Friends of the Florida Caverns State Park*, <https://www.floridastateparks.org/parks-and-trails/friends-florida-caverns-state-park> (last visited Feb. 6, 2019).

³² Florida State Parks, *Friends of Paynes Prairie*, <https://www.floridastateparks.org/parks-and-trails/paynes-prairie-preserve-state-park/friends-paynes-prairie> (last visited Feb. 6, 2019).

³³ The Friends of Silver Springs State Park, *Springs Festival*, <https://www.thefriendsofsilversprings.org/springs-festival> (last visited Feb. 6, 2019).

Senate Professional Staff Review of the DEP Division of Recreation and Parks CSOs

The statutory authority for the DEP's Division of Recreation and Parks' CSOs is scheduled for repeal on October 1, 2019, unless reviewed and saved from repeal by the Legislature.³⁴ Professional staff of the Senate Committee on Environment and Natural Resources reviewed the 83 Division of Recreation and Parks CSOs to verify their compliance with applicable Florida Statutes. After reviewing the submitted documents and other requirements to which the CSOs are subject, staff found that these organizations are active CSOs that support Florida's state parks and provide valuable benefits to the state and its visitors. Staff concluded that it appears the 83 CSOs are in substantial compliance with their governing legislation³⁵ as well as the general CSO requirements.³⁶

Staff identified a few deficiencies where individual CSOs are not in full compliance with the applicable Florida Statutes. A contract between an agency and a CSO must contain 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."³⁷ However, the DEP's contracts with its CSOs expressly authorize a CSO that is dissolved to transfer its funds to another CSO. Because transferring funds to another CSO that supports the same agency is consistent with the legislative intent of the provision, staff recommends adding a statutory provision to specifically authorize a CSO to transfer funds to another CSO that supports the DEP upon dissolution.

The DEP has substantially complied with the general statutory requirements and has posted its CSOs' documents, IRS forms, and annual audits, where available, on its website.³⁸ The DEP has posted each CSO's code of ethics on its website.³⁹ Each CSO with annual expenditures in excess of \$300,000 must provide for an annual financial audit of its accounts and records.⁴⁰ Five CSOs were identified as requiring audits and one audit is still outstanding as of the date of this analysis. Additionally, several audits were not conducted in accordance with the Government Auditing Standards required by Auditor General rules.⁴¹ These standards provide more information about whether the CSO is complying with the law than a general audit provides.

Staff finds that while many of the DEP's CSOs have substantially complied with the statutory requirements, more oversight is required for those CSOs with annual expenditures in excess of \$300,000. Staff recommends requiring the CSOs that meet the audit threshold to provide audits for the last three fiscal years and ensure that audits are conducted in accordance with Government Auditing Standards, which explicitly reinforces the existing requirement that audits be conducted in accordance with rules adopted by the Auditor General.

³⁴ Sections 20.2551(6) and 258.015(4), F.S.

³⁵ Sections 20.2551 and 258.015, F.S.

³⁶ Section 20.058, F.S.

³⁷ Section 20.058, F.S.

³⁸ *DEP CSO Reports*, available at <https://floridadep.gov/comm/comm/content/citizen-support-organizations-reports> (last visited Feb. 6, 2019).

³⁹ *Id.*

⁴⁰ Section 215.981, F.S.

⁴¹ Rule 10.651(4), Rules of the Auditor General.

Other deficiencies are technical and administrative in nature and can be resolved by the DEP and its CSOs. The DEP has committed to updating its CSO agreements, tracking CSO compliance, and establishing consistent and streamlined reporting.⁴²

Staff recommends repealing the sunset date for future legislative review of the DEP CSOs to allow for their continued operation, while requiring the DEP to report to the Legislature by December 1, 2019, on the CSOs requiring audits. If any of the CSOs are not in compliance with statutory requirements, the DEP must identify the CSOs in its report and describe whether it has terminated its contracts with the CSOs as required by law.⁴³

Florida Coastal Office

The DEP's Florida Coastal Office coordinates the protection of the state's coastal resources, including more than four million acres of submerged lands and coastal uplands, aquatic preserves and national estuarine research reserves, and coral reef resources.⁴⁴

The Florida Coastal Office's CSOs support and aid aquatic preserves and other managed areas through operational support provided by volunteers and financial support provided by fundraising. CSO members and volunteers work to secure grants and donations, plan and staff special events and programs, conduct research as citizen scientists, and increase outreach to benefit Florida's coastal and aquatic resources.⁴⁵

Examples of the important benefits CSOs provide to coastal areas and their communities are Friends of the Reserve providing scholarships to high school students in the Apalachicola area⁴⁶ and Friends of Charlotte Harbor Aquatic Preserves removing nonnative species and monitoring water quality.⁴⁷

Senate Professional Staff Review of the DEP Florida Coastal Office CSOs

The statutory authority for the DEP's CSOs is scheduled to repeal on October 1, 2019, unless reviewed and saved from repeal by the Legislature.⁴⁸ Professional staff of the Senate Committee on Environment and Natural Resources reviewed the 13 Florida Coastal Office CSOs to verify their compliance with applicable Florida Statutes. After reviewing the submitted documents and other requirements to which the CSOs are subject, staff found that these organizations are active CSOs that support Florida's aquatic preserves and provide valuable benefits to the state and its visitors.

⁴² Department of Environmental Preservation, *Presentation on Citizen Support Organizations to the Florida Senate Committee on Environment and Natural Resources* (Jan. 22, 2019), available at http://www.flsenate.gov/PublishedContent/Committees/2018-2020/EN/MeetingRecords/MeetingPacket_4355.22.19.pdf (last visited Feb. 6, 2019) [hereinafter *DEP Presentation*].

⁴³ Section 20.058(4), F.S.

⁴⁴ Florida Department of Environmental Protection, *Florida Coastal Office*, <https://floridadep.gov/fco> (last visited Feb. 6, 2019).

⁴⁵ Florida Coastal Office, *Citizen Support Organization Handbook*, on file with Senate Environment and Natural Resources Committee.

⁴⁶ Apalachicola National Estuarine Research Reserve, *Friends of the Reserve*, <https://apalachicolareserve.com/for.php> (last visited Feb. 6, 2019).

⁴⁷ Friends of Charlotte Harbor Aquatic Preserves, *Projects*, <https://fchap.org/projects> (last visited Feb. 6, 2019).

⁴⁸ Section 20.2551, F.S.

Staff concluded that several of the 13 CSOs are not in full compliance with the applicable Florida Statutes. Some contracts need to be updated and missing information should be submitted. A contract between an agency and a CSO must contain 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.”⁴⁹ Contracts between the CSOs and the DEP generally do not provide for the return of state funds to the state if the statutory authorization is repealed, the contract is terminated, or the organization is dissolved. Because transferring funds to another CSO that supports the same agency is consistent with the legislative intent of the provision, staff recommends adding a statutory provision to specifically authorize a CSO to transfer funds to another CSO that supports the DEP upon dissolution.

The DEP has substantially complied with general statutory requirements and has posted its CSOs’ documents, IRS forms, and annual audits, where available, on its website.⁵⁰ The DEP has posted each CSO’s code of ethics on its website.⁵¹ However, the Florida Coastal Office has not had the same level of organization in oversight of its CSOs that is evident for the CSOs that are overseen by the Division of Recreation and Parks.

Staff finds that while the DEP and its CSOs have substantially complied with many of the statutory requirements, more oversight is needed. Staff recommends that the DEP be required to report to the Legislature on what it is doing to facilitate full compliance for the Florida Coastal Office’s CSOs, including updating agreements and authorizations if needed. Other deficiencies are technical and administrative in nature and can be resolved by the DEP and its CSOs. The DEP has committed to updating its CSO agreements, tracking CSO compliance, and establishing consistent and streamlined reporting.⁵²

Staff recommends repealing the sunset date for future legislative review of the DEP CSOs to allow for their continued operation, while requiring the DEP to report to the Legislature by December 1, 2019, on the Florida Coastal Office CSOs’ compliance with statutory requirements. If any of the CSOs are not in compliance, the DEP must identify the CSOs in its report and describe whether it has terminated its contracts with the CSOs.

III. Effect of Proposed Changes:

The bill requires the DEP to submit a report to the President of the Senate and the Speaker of the House of Representatives that examines the financial transparency, accountability, and ethics of those CSOs with annual expenditures of more than \$300,000 and those CSOs under the Florida Coastal Office, as of November 1, 2018.

⁴⁹ Section 20.058, F.S.

⁵⁰ *DEP CSO Reports*, available at <https://floridadep.gov/comm/comm/content/citizen-support-organizations-reports> (last visited Feb. 6, 2019).

⁵¹ *Id.*

⁵² *DEP Presentation*, (Jan. 22, 2019), available at http://www.flsenate.gov/PublishedContent/Committees/2018-2020/EN/MeetingRecords/MeetingPacket_4355.22.19.pdf (last visited Feb. 6, 2019).

The bill provides that the report must include audits for the last three fiscal years for any CSO that is subject to the statutory requirement for an audit. Of the DEP's 96 CSOs, this requirement only includes those with annual expenditures of \$300,000 or more. Audits conducted after March 1, 2019, must be conducted in accordance with Government Auditing Standards, which explicitly reinforces the existing requirement that audits be conducted in accordance with rules adopted by the Auditor General. The Auditor General rules specify Government Auditing Standards as the standards for audits of nonprofit and for-profit organizations. The bill provides that the report must demonstrate that the CSOs within the Florida Coastal Office, as of November 1, 2018, are in compliance with statutory provisions.

The bill provides that the report must identify any of the DEP's CSOs included in the report that are not in compliance with statutory requirements and describe whether the DEP has terminated its contracts with those CSOs. The report must also demonstrate how the contracts between the DEP and its CSOs have been revised to comply with all relevant provisions of law.

The bill deletes the scheduled repeal of provisions governing CSOs established under the DEP, allowing the existing CSOs to continue operating and providing benefits to the DEP.

The effective date of the bill is July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By saving the statutes governing the DEP's CSOs from repeal, the bill sustains a source of funding, promotional support, and other assistance that benefits Florida citizens, youth, and visitors to the state parks and aquatic preserves.

C. Government Sector Impact:

The bill has no fiscal impact on state funds; however, by saving the statutes governing the DEP's CSOs from repeal, the bill allows the CSOs to continue benefitting the DEP and its programs through valuable research and support that assists the DEP in meeting its goals.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.2551 and 258.015.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Appropriations on March 27, 2019:

The CS removes from the bill language requiring a contract between the DEP and its CSOs to include a provision that requires the CSO to transfer any state funds held in trust by the organization to another CSO under the DEP or revert to the state if the authorizing statute for a CSO is repealed, the contract is terminated, or the organization is dissolved.

These issues are addressed for all CSOs in s. 20,058, F.S., except that if a CSO is dissolved or its authorizing statute is repealed, a dissolved CSO may not transfer its assets to another CSO under DEP, as the original bill would have allowed. The statute also requires that the state funds held by the CSO revert to the state within 30 days after a CSO is dissolved or terminated.

The bill continues to require the DEP to submit a separate report by December 1, 2019, regarding its CSOs and their compliance with ss. 20.058 and 20.0551, F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
