

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 Environment and Natural Resources

BILL: SPB 7024

INTRODUCER: Committee on Environment and Natural Resources

SUBJECT: Department of Environmental Protection Citizen Support Organizations

DATE: February 13, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Anderson</u>	<u>Rogers</u>	_____	EN Submitted as Comm. Bill/Fav

I. Summary:

SPB 7024 deletes the scheduled repeal of provisions governing citizen support organizations established under the Department of Environmental Protection, allowing the existing citizen support organizations to continue operating and providing benefits to the department.

The bill requires a contract between the department and its citizen support organizations to include a provision that requires the citizen support organization to transfer any state funds held in trust by the organization to another citizen support organization under the department or revert to the state if the authorizing statute for a citizen support organization is repealed, the contract is terminated, or the organization is dissolved.

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 citizen support organizations with annual expenditures of more than \$300,000 and those citizen support organizations under the Florida Coastal Office, as of November 1, 2018.

The report must include audits for the last three fiscal years for any citizen support organization that is subject to the statutory requirement for an audit. Of the department's 96 citizen support organizations, 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 report must demonstrate that citizen support organizations under the Florida Coastal Office, as of November 1, 2018, comply with statutory requirements.

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

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 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 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

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.*

⁷ Section 20.058(4), F.S.

⁸ *Id.*

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 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 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

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.*

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

¹⁷ Section 112.3251, F.S.

Department of Environmental Protection

DEP is the state's lead agency for environmental management and stewardship, protecting air, water, and land in the state. DEP's Land and Recreation programs, including the Division of Recreation and Parks, acquire and protect lands for preservation and recreation. 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 DEP or the Division of Recreation and Parks must determine that the CSO is consistent with 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 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 DEP or the state park system or its individual units.²⁰ However, CSOs must not receive funds from 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 DEP's CSOs with annual expenditures above \$300,000.²²

DEP may permit its CSOs to use 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

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

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*].

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

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 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

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

The statutory authority for DEP's Division of Recreation and Parks' CSOs are scheduled to 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

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).

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

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, 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 DEP upon dissolution.

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 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 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.

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

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.

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*].

Staff recommends repealing the sunset date for future legislative review of DEP CSOs to allow for their continued operation, while requiring 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, 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

DEP's Florida Coastal Office coordinates the protection of the state's coastal resources, including more than 4 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 DEP Florida Coastal Office CSOs

The statutory authority for 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.

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

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.

organization is dissolved.”⁴⁹ Where contracts between the CSO and DEP exist, the contracts 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 DEP upon dissolution.

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 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 DEP and its CSOs have substantially complied with many of the statutory requirements, more oversight is needed. Staff recommends that 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 DEP and its CSOs. 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 DEP CSOs to allow for their continued operation, while requiring 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, DEP must identify the CSOs in its report and describe whether it has terminated its contracts with the CSOs.

III. Effect of Proposed Changes:

SPB 7024 requires that a contract between the Department of Environmental Protection (DEP) and its citizen support organizations (CSOs) must include a provision that requires any state funds held in trust by the organization to be transferred to another DEP CSO or revert to the state if the authorizing statute for the CSO is repealed, the contract is terminated, or the organization is dissolved.

The bill requires 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 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 DEP's CSOs included in the report that are not in compliance with statutory requirements and describe whether DEP has terminated its contracts with those CSOs.

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

By saving the statutes governing DEP's CSOs from repeal, the bill allows the CSOs to continue benefitting DEP and its programs through valuable research and support that assists 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: ss. 20.2551 and 258.015.

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.