

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1079 Fiscal Accountability for Nongovernmental Entities

**SPONSOR(S):** State Affairs Committee, Persons-Mulicka

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) State Affairs Committee	22 Y, 0 N, As CS	Toliver	Williamson

### SUMMARY ANALYSIS

The "Florida Not for Profit Corporation Act" provides for the incorporation of nonprofit corporations and governs the formation, operation, merger, and dissolution of domestic nonprofit corporations.

The bill creates fiscal accountability measures for nongovernmental entities, which the bill defines as nonprofit corporations that receive at least 50 percent of their revenue, in any fiscal year of the entity, from state-appropriated funds, including state-appropriated federal funds. However, direct-support organizations and citizen support organizations are excluded from the definition.

The bill requires nongovernmental entities to use state funds in accordance with their stated purpose and for the benefit of the public and prohibits such funds from being loaned to another entity for any purpose; donated as charitable or political contributions; used to pay for bonuses, exit bonuses, incentive payments, or severance payments to employees; and used to retain a lobbyist to represent the nongovernmental entity before the legislative or executive branch.

The bill requires a nongovernmental entity that receives state funds equal to or greater than \$500,000 each fiscal year, for five consecutive years, to complete an operational audit. The operational audit must be completed within six months after the end of the entity's fifth fiscal year.

Beginning September 15, 2023, and each September 15 thereafter, each nongovernmental entity must submit an annual report to the state agency from which it received state funds during the preceding fiscal year. The annual report must include compensation information concerning certain executive officers, a copy of the entity's Internal Revenue Service Form 990, a detailed summary of the entity's administrative expenses, and the percentage of state funds relative to the entity's revenue. In addition, a nongovernmental entity must provide certain attestations before receiving funds from a state agency. A state agency may not release or transfer funds to a nongovernmental entity until the entity has submitted the appropriate attestation.

Beginning December 15, 2023, and each December 15 thereafter, each state agency must annually report to the Chief Inspector General (CIG) and the Office of Program Policy Analysis and Government Accountability, the information reported by each nongovernmental entity in its annual report. The CIG must adopt rules establishing the report formats as well as guidelines for nongovernmental entities to follow for purposes of calculating their administrative expenses relative to all other expenses of the entity.

The bill may have an insignificant fiscal impact on state government, but does not appear to have a fiscal impact on local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Florida Not for Profit Corporation Act

A “corporation not for profit” (nonprofit corporation) is defined as “a corporation no part of the income or profit of which is distributable to its members, directors, or officers,” with certain exceptions.<sup>1</sup> The “Florida Not for Profit Corporation Act”<sup>2</sup> (act) provides for the incorporation of nonprofit corporations and governs the formation, operation, merger, and dissolution of domestic nonprofit corporations. Nonprofit corporations may be organized under the act for any lawful purpose or purposes not for monetary profit and not specifically prohibited to corporations under other laws. Such purposes include, without limitation, charitable, benevolent, eleemosynary, educational, historical, civic, patriotic, political, religious, social, fraternal, literary, cultural, athletic, scientific, agricultural, horticultural, animal husbandry, and professional, commercial, industrial, or trade association purposes.<sup>3</sup> Lawfully organized nonprofit corporations receive certain exemptions from federal and state taxes.

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

A citizen support organization (CSO) is an organization that is a Florida nonprofit corporation incorporated under the provisions of Chapter 617, F.S., and is authorized by Florida law to benefit or provide assistance to a governmental entity.<sup>4</sup> A CSO is 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, or real or personal property; and make expenditures for the benefit of the intergovernmental programs of their affiliated department or agency.

A direct-support organization (DSO) is an organization that is a Florida nonprofit corporation incorporated under the provisions of Chapter 617, F.S., and is authorized by Florida law to benefit or provide assistance to a governmental entity.<sup>5</sup>

##### Florida Single Audit Act (FSAA)

The FSAA establishes uniform state audit and accountability requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects.<sup>6</sup> The FSAA is intended to closely parallel the Federal Single Audit Act. Under the FSAA, nonstate entities include nonprofit organizations, for-profit organizations, local government entities, and higher education entities.<sup>7</sup>

Pursuant to the FSAA, certain entities that meet the “audit threshold” requirements are subject to a state single audit or a project-specific audit.<sup>8</sup> Currently, the “audit threshold” requires each nonstate entity that expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year to have a state single audit, or a project-specific audit, for such fiscal year.<sup>9</sup>

#### **Effect of the Bill**

The bill creates fiscal accountability measures for nongovernmental entities, which the bill defines as nonprofit corporations that receive at least 50 percent of their revenue, in any fiscal year of the entity, from state-appropriated funds, including state-appropriated federal funds. However, DSOs and CSOs are excluded from the definition of “nongovernmental entity.”

---

<sup>1</sup> Section 617.01401(5), F.S.

<sup>2</sup> Chapter 617, F.S.

<sup>3</sup> Section 617.0301, F.S.

<sup>4</sup> Section 20.2551, F.S.

<sup>5</sup> Section 16.618, F.S.

<sup>6</sup> Section 215.97, F.S.

<sup>7</sup> Section 215.97(2)(m), F.S.

<sup>8</sup> Section 215.97(2)(a), F.S.

<sup>9</sup> *Id.*

The bill requires nongovernmental entities to use state funds<sup>10</sup> only in accordance with their stated purpose and for the benefit of the public. The bill prohibits nongovernmental entities from using state funds for the following purposes:

- Loaning such funds to another entity for any purpose.
- Donating such funds as charitable or political contributions.
- Paying for bonuses, exit bonuses, incentive payments, or severance payments to their employees.
- Retaining a lobbyist to represent the nongovernmental entity before the legislative or executive branch; however, a full-time employee of the nongovernmental entity may register as a lobbyist and represent the entity before those branches. Except as a full-time employee of the nongovernmental entity, the bill specifically prohibits a person from accepting state funds from a nongovernmental entity.

A nongovernmental entity that receives state funds equal to or greater than \$500,000 each fiscal year for five consecutive years must complete an operational audit.<sup>11</sup> The operational audit must be completed within six months after the end of the entity's fifth fiscal year, and must be conducted by an independent auditor or certified public accountant in accordance with auditing standards stated in the rules of the Auditor General. Medicaid funds are not counted as state funds for purposes of the operational audit requirements.

Beginning September 15, 2023, and each September 15 thereafter, each nongovernmental entity must submit an annual report to the state agency<sup>12</sup> from which it received state funds during the preceding fiscal year. The annual report must include all of the following information:

- The name, position, and all compensation earned or awarded, whether paid or accrued, regardless of contingency, to each member of the board of directors, chief executive officer, chief financial officer, chief operating officer, or other person performing equivalent functions.
- A copy of the entity's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax Form (Form 990).
- A detailed summary of the nongovernmental entity's administrative expenses, including the percentage of such administrative expenses relative to all other expenses of the entity.
- The percentage of state funds relative to the nongovernmental entity's revenue.

Beginning December 15, 2023, and each December 15 thereafter, each state agency must report to the Chief Inspector General (CIG) and the Office of Program Policy Analysis and Government Accountability, the information reported by each nongovernmental entity. The CIG must adopt rules by December 31, 2022, prescribing:

- The format nongovernmental entities must use when submitting their annual report.
- Guidelines for nongovernmental entities to follow for purposes of calculating their administrative expenses relative to all other expenses of the entity.
- The format state agencies must use when generating their report.

Beginning September 15, 2023, and each September 15 thereafter, before a nongovernmental entity receives funds from a state agency, it must submit one of the following attestations:

- An attestation that the entity received at least 50 percent of its revenue from state funds in the immediately preceding fiscal year and submitted its annual report; or

---

<sup>10</sup> The bill defines "state funds" to mean state-appropriated funds, or state-appropriated federal funds.

<sup>11</sup> Section 11.45(1)(i), F.S., defines "operational audit" to mean "an audit whose purpose is to evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines...Such audits examine internal controls that are designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets, and identify weaknesses in those internal controls."

<sup>12</sup> The bill defines "state agency" to mean any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission.

- An attestation that the entity did not receive at least 50 percent of its revenue from state funds in the immediately preceding fiscal year and therefore was not required to submit an annual report.

The bill prohibits a state agency from releasing or transferring funds to a nongovernmental entity until the entity has submitted one of the two attestations.

**B. SECTION DIRECTORY:**

Section 1 creates s. 215.986, F.S., relating to fiscal accountability for certain nongovernmental entities.

Section 2 provides an effective date of July 1, 2022.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill may have an insignificant negative fiscal impact on state agencies associated with the annual reporting requirements in the bill and on the CIG related to the requirement to promulgate rules by December 31, 2022.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have an indeterminate negative fiscal impact on nonprofit entities impacted by the bill as they would be required to comply with the auditing and reporting requirements contained therein.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill requires the CIG to adopt rules by December 31, 2022, creating certain formats for report submission as well as certain guidelines.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 26, 2022, the State Affairs Committee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from HB 1079 in the following ways:

- Applied the provisions of the bill to one type of entity, a nongovernmental entity, and defined that term to mean nonprofit corporations that receive at least 50 percent of their funding from state funds. HB 1079 applied to different entities depending on the context.
- Used the uniform term “state funds” throughout the bill, and defined the term to mean state-appropriated funds, including state-appropriated federal funds. HB 1079 used various terms regarding governmental funds with differing applicability depending on the context.
- Removed the sliding scale of audits required in HB 1079 and required only an operational audit if the nongovernmental entity receives \$500,000 from state funds for five consecutive years.
- Removed the requirement that certain prohibitions apply to agency agreements funded through state or federal financial assistance and applied those same prohibitions to state funds used by nongovernmental entities.
- Removed the requirement that a nongovernmental entity submit executive compensation information to the Florida Has a Right to Know website and instead required a nongovernment entity to submit similar information in an annual report to the agency from which it receives funding.
- Required state agencies to submit information contained in a nongovernmental entity’s annual report to the CIG and the Office of Program Policy Analysis and Government Accountability and required the CIG to adopt rules governing annual reports.

This analysis is drafted to the committee substitute adopted by the State Affairs Committee.