

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 925 Direct-support Organizations
SPONSOR(S): Education & Employment Committee, McClain and others
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/SB 1278

FINAL HOUSE FLOOR ACTION: 116 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 925 passed the House on April 26, 2023, as CS/SB 1278.

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. A district school board DSO is an organization that is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of public K-12 education and adult career and community education programs for the school district that they support.

The bill authorizes the DCF to establish a DSO with the sole purpose to support the DCF in carrying out its purposes and responsibilities. The DSO board of directors is appointed by the Secretary of the DCF and must operate pursuant to a contract with the department.

The bill authorizes district school boards to contract with a DSO for personal services or operations. Retirees of the Florida Retirement System (FRS) must first satisfy the requirements for termination from employment prior to providing services for a FRS employer, and are subject to the reemployment limitations in law.

The bill also raises the threshold of expenditures and expenses that requires a district school board DSO to undergo a financial audit from \$100,000 to \$250,000. Additionally, the bill authorizes district school boards to contract with a vendor for an annual financial audit of a DSO.

The bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on June 29, 2023, ch. 2023-310, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background on Citizen Support Organizations and Direct-Support Organizations

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.

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.¹ 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:²

- 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).³

Each agency receiving the above information must make the information available to the public through the agency's website. If the CSO or DSO maintains a website, the agency's website must provide a link to the website of the CSO or DSO.⁴ Additionally, any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting and posting the information.⁵ 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.⁶ The contract must also include a provision for ending operations and returning state-issued funds to the state if the authorizing statute is repealed, the contract is terminated, or the organization is dissolved.⁷

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 (OPPAGA) 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.⁸

Finally, 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.⁹

¹ Section 3, ch. 2014-96, L.O.F, codified as s. 20.058, F.S.

² Section 20.058(1), F.S.

³ 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. 501.

⁴ Section 20.058(2), F.S.

⁵ Section 20.058(4), F.S.

⁶ *Id.*

⁷ *Id.*

⁸ Section 20.058(3), F.S.

⁹ Section 20.058(5), F.S.

CSO and DSO Audit Requirements

Current law requires each CSO and DSO created or authorized with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.¹⁰ 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.¹¹ 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.¹²

This audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board¹³ because there are separate requirements in law for those specific entities. Additionally, the threshold for an audit of a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services is \$300,000.¹⁴

The Auditor General may conduct audits or other engagements of the accounts and records of a CSO or DSO, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee.¹⁵ The Auditor General is authorized to require and receive any records from the CSO or DSO, or its independent auditor.¹⁶

The Department of Children and Families

Present Situation

The Department of Children and Families (DCF) works with local communities to protect the vulnerable, promote strong and economically self-sufficient families, and advance personal and family recovery and resiliency.¹⁷ The DCF must provide services relating to: adult protection; child care regulation; child welfare; domestic violence; economic self-sufficiency; homelessness; mental health; refugees; and substance abuse.¹⁸

The DCF vision is to empower people with complex and diverse needs to achieve the best outcomes for themselves and their families, as well as to provide world-class and constantly improving service focused on providing the people it serves with the level and quality that the DCF would demand and expect for its own families.¹⁹

Direct Support Organization for the Children and Youth Cabinet

In 2007, the Legislature created the Children and Youth Cabinet (Cabinet).²⁰ The Cabinet is charged with promoting and implementing collaboration, creativity, increased efficiency, information sharing and improved service delivery between and within state agencies and organizations. As directed by statute, in 2007 the Cabinet developed a shared vision and a Strategic Plan to guide the Cabinet in designing and implementing measurable outcomes and actions that promote collaboration and information

¹⁰ Section 215.981(1), F.S.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Section 215.981(2), F.S.

¹⁵ Section 11.45(3)(d), F.S.

¹⁶ *Id.*

¹⁷ Section 20.19(1)(a), F.S.

¹⁸ Section 20.19(4)(a)1.-9., F.S.

¹⁹ Florida Department of Children and Families, *Mission, Vision and Values*, <https://www.myflfamilies.com/about/additional-services-offices/office-secretary/mission-vision-and-values> (last visited Apr. 27, 2023).

²⁰ Chapter 2007-151, s. 1, L.O.F., codified as s. 402.56, F.S.

sharing.²¹ The mission of the Cabinet is to ensure that Florida's public policy relating to children and youth promotes interdepartmental collaboration and program implementation in order for services designed for children and youth to be planned, managed and delivered in a holistic and integrated manner to improve the self-sufficiency, safety, economic stability, health, and quality of life of all children and youth in Florida.²²

DCF is required by law to establish a DSO to assist the Cabinet in carrying out its purpose and responsibilities.²³ The sole purpose of the DSO is to support the Cabinet, and must be:

- a Florida not-for-profit corporation;
- organized to make expenditures to or for the Cabinet; and
- approved by the DCF to operate for the benefit of and in a manner consistent with the goals of the Cabinet and in the best interest of the state.²⁴

Effect of the Bill

The bill authorizes the DCF to create a DSO with the sole purpose to support the DCF in carrying out its purposes and responsibilities. The DSO must be:

- A Florida not-for-profit corporation.
- Organized and operated to:
 - conduct programs and activities;
 - raise funds;
 - request and receive grants, gifts, and bequests of moneys;
 - acquire, receive, hold, invest, and administer securities, funds, objects of value, or other real or personal property; and
 - make expenditures to or for the direct or indirect benefit of the DCF and the individuals it serves.
- Determined by the DCF to be operating in a manner consistent with the goals and purposes of the DCF, the best interest of the state, and the needs of children and adults served by the DCF.

The DSO must operate under a written contract with the DCF that provides for all of the following:

- Approval of articles of incorporation and bylaws by the DCF.
- Submission of an annual budget for approval by the DCF.
- Annual certification by the DCF that the DSO is in compliance with the contract and operating in a manner consistent with the goals and purposes of the DCF and in the best interest of the state. This certification must be made annually and reported in the official minutes of a meeting of the DSO.
- Reversion of moneys and property held in trust by the DSO to the state if the DCF ceases to exist, or to the DCF if the DSO is no longer approved to operate for the DCF, a county commission, or a circuit board, or ceases to exist.
- The fiscal year for the DSO is from July 1 of each year through June 30 of the following year.
- Disclosure of material provisions of the contract and the distinction between the DCF and the DSO to donors, including on all promotional and fundraising publications.

The Secretary of the DCF (Secretary) must appoint the board of directors of the DSO. The board members must be appointed according to the organization's bylaws.

The DCF may allow the DSO to use fixed property or facilities of the DCF at no cost. The DCF may impose conditions on the DSO's use of fixed property or facilities, and the DCF may refuse to allow the

²¹ Governor Ron DeSantis – 46th Governor of Florida, *Florida Children and Youth Cabinet*, <https://www.flgov.com/childrens-cabinet/> (last visited Apr. 27, 2023).

²² *Id.*

²³ Section 402.57(1), F.S.

²⁴ Section 402.57(1)(a)-(c), F.S.

DSO to use any fixed property or facilities if the DSO does not provide equal membership and employment opportunities to all people, regardless of race, color, religion, sex, age, or national origin.

The DCF may, without charge, allow appropriate use of “personnel services” of the DCF by the DSO. The bill provides that “personnel services” include full-time or part-time personnel, as well as payroll processing services.

The DCF must adopt rules prescribing the procedures by which the DSO is governed and any conditions with which it must comply to use property, facilities, or personnel services of the DCF.

The DSO may collect, expend, and provide funds to address gaps in services for the children and adults served by the DCF; develop, implement, and operate targeted prevention efforts; provide services and activities that support the goals of the DCF; and cover functions of the DSO’s board of directors, as necessary and approved by the DCF. The DSO may not use funds for the purpose of lobbying. The DSO may hold any moneys in a separate depository account in the name of the DSO, subject to the provisions of the contract with the DCF. The DSO must provide an annual financial audit in accordance with statutory requirements.²⁵

The bill provides for the repeal of the enacting subsection on October 1, 2028, unless reviewed and saved from repeal by the Legislature.

District School Board Direct-Support Organizations

Present Situation

A district school board DSO is an organization that:²⁶

- is approved by the district school board;
- is a Florida not-for-profit corporation; and
- is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of public K-12 education and adult career and community education programs in this state.

The board of directors of the DSO must be approved by the district school board.²⁷

Use of Property by the District School Board DSO

Section 1001.453, F.S., sets forth limitations on the use of district property by the DSO. DSOs are authorized to use the property, facilities, and personal services²⁸ of the district. The district school board must adopt rules in coordination with the Florida Department of Education (DOE) that govern the DSO’s use of the district property, facilities, or personal services, and provide for budget and audit review and oversight by the district school board and the DOE.

However, the DSO is not permitted to use the property, facilities, or personal services if the DSO does not provide equal employment opportunities to all persons, regardless of race, color, religion, sex, age, or national origin.

Employment after Retirement

²⁵ Section 215.981, F.S. Provides audits of DSO’s and CSO’s created, approved, or administered by a State agency are subject to rules adopted by the State agency that created, approved, or administers the DSO or CSO. Financial audits must be conducted in accordance with rules adopted by the Auditor General. *See also* State of Florida Auditor General, *Rules of the Auditor General (2022)*, at 1, available at https://flauditor.gov/pages/pdf_files/10_700.pdf.

²⁶ Section 1001.453, F.S.

²⁷ Section 1001.453(3), F.S.

²⁸ Section 1001.453(1)(b), F.S. Personal services includes full-time or part-time personnel, as well as payroll processing. *Id.*

The Deferred Retirement Option Program (DROP) is a voluntary retirement program available only to Florida Retirement System (FRS) Pension Plan members who qualify for normal retirement.²⁹ A member of FRS is required to terminate employment to begin receiving benefits or begin participation in DROP.³⁰ Termination occurs when a member ceases all employment relationships with his or her FRS employer.³¹ Termination is void if any FRS-participating employer reemploys a member during a specified period of time.³² However, an FRS retiree can work for any private employer, for any public employer not participating in the FRS, or for any employer in another state without affecting his or her FRS benefits.³³

Before July 1, 2010, an FRS retiree was allowed to be reemployed by an FRS employer one calendar month after retiring or after the member's DROP termination date. If the retiree was reemployed during months two through 12, the retiree was not authorized to receive his or her pension benefit until month 13. However, a retiree was authorized to be reemployed as instructional personnel on an annual contractual basis after one calendar month without having his or her retirement benefits disrupted.³⁴

A member who retires on or after July 1, 2010, may not be reemployed by an FRS employer until month seven after retiring or after the member's DROP termination date. If the retiree is reemployed during months seven through 12, the retiree may not receive his or her pension benefit until month 13.³⁵ The reemployment exception for retirees reemployed as instructional personnel no longer applies to members who retire and are reemployed on or after July 1, 2010; however, a retired law enforcement officer may be reemployed as a school resource officer by an FRS-covered employer during months 7 through 12 after retirement or DROP termination and receive both a salary and pension benefits.³⁶

A retiree employed in violation of the reemployment limitation and the FRS employer are jointly and severally liable for reimbursement to the retirement trust fund from which the benefits were paid. Pension benefits remain suspended until repayment has been made. Benefits suspended beyond the reemployment limitation are applied towards repaying the benefits received in violation of the reemployment limitation.³⁷

District School Board DSO Audit Requirements

Similar to other DSOs, each district school board DSO with more than \$100,000 in expenditures or expenses is required to provide for an annual financial audit of its accounts and records.³⁸ The audit must be conducted by an independent certified public accountant in accordance with the rules adopted by the Auditor General³⁹ and the Commissioner of Education.⁴⁰ The annual audit report must be submitted within nine months after the fiscal year's end to the district school board and the Auditor General. The Commissioner of Education, the Auditor General, and the OPPAGA have the authority to require and receive from the organization or the district auditor any records relative to the operation of the organization.⁴¹

²⁹ Florida Retirement System, *Pension Plan Deferred Retirement Option Program* (2022), at 3, available at <https://employer.frs.fl.gov/forms/drop-guide.pdf>.

³⁰ *Id.* at 5.

³¹ Section 121.021(39)(a), F.S.

³² *Id.*

³³ *See* s. 121.091(9)(a), F.S.

³⁴ Section 121.091(9)(b), F.S.

³⁵ Section 121.091(9)(c), F.S.

³⁶ Section 121.091(9)(f), F.S.

³⁷ Section 121.091(9)(b)1. and (9)(c)3., F.S.

³⁸ Section 1001.453(4), F.S.

³⁹ Section 11.45(8), F.S.

⁴⁰ Section 1001.453(4), F.S.

⁴¹ Section 1001.453(4), F.S.

Effect of the Bill

The bill authorizes district school boards to contract with a DSO for personal services or operations. Retirees of the FRS must first satisfy the requirements for termination from employment prior to providing services or operations for a FRS employer, and are subject to the reemployment limitations in law.⁴²

To reduce the burden of costs associated with annual audits for smaller DSOs,⁴³ the bill increases from \$100,000 to \$250,000 the threshold of expenditures and expenses to require a DSO provide for a financial audit. Additionally, the bill authorizes district school boards to contract with a vendor for an annual financial audit of a DSO.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

⁴² Section 121.091(9), F.S.

⁴³ National Council of Nonprofits, *What is an independent audit?* <https://www.councilofnonprofits.org/running-nonprofit/nonprofit-audit-guide/what-independent-audit> (last visited Apr. 27, 2023); 501(c) Services, *Does your nonprofit really need an annual audit? Here are the alternatives,* <https://www.501c.com/does-your-nonprofit-really-need-an-annual-audit-here-are-the-alternatives/#:~:text=Audits%20are%20time%20consuming%20and,the%20National%20Council%20of%20Nonprofits> (last visited Apr. 27, 2023).