

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 Governmental Oversight and Accountability Committee

BILL: CS/SB 746

INTRODUCER: Committee on Governmental Oversight and Accountability and Senator Fasano

SUBJECT: Direct-Support Organizations/Department of Elder Affairs

DATE: April 16, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ray	Walsh	CF	Favorable
2.	Naf	Wilson	GO	Fav/CS
3.			HA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill provides for the establishment of a direct-support organization for the Department of Elder Affairs. The organization will provide assistance, funding, and support for the department in carrying out its mission.

This bill also authorizes the Florida Historic Capitol Curator to assist the Florida Historic Capitol in the performance of its mission through specified actions.

Finally, this bill provides for the establishment of a direct-support organization for the Legislative Research Center and Museum and the Florida Historic Capitol Curator. The organization will provide assistance, funding, and support for the center and curator, including, but not limited to, support for their educational programs and initiatives.

This bill creates ss. 430.82, s. 272.135(2), and s. 272.136, F.S.

II. Present Situation:

Direct-Support Organizations

Direct-Support Organizations in General

Florida law provides for the establishment of direct-support organizations as a means to assist state agencies in accomplishing their missions. Direct-support organizations are established as Florida corporations not for profit which are incorporated under ch. 617, F.S., and approved by the Department of State. Section 617.01401(5), F.S., defines the term “corporation not for profit” as “a corporation no part of the income or profit of which is distributable to its members, directors, or officers.”

Direct-support organizations perform a variety of services for state agencies, including:

- Raising money;
- Submitting requests for and receiving grants from the federal government, the state, or its political subdivisions;
- Receiving, holding, investing, and administering property;
- Assisting an agency in performing its mission; and
- Making expenditures for the benefit of the supported agency.¹

Direct-support organizations have been established to support a wide array of services and agencies, including child abuse prevention and adoption; tourism; public guardianship; victims of crime; universities, community colleges, and school districts; the Florida National Guard; the Departments of Corrections, Juvenile Justice, Agriculture and Consumer Services, and Veterans’ Affairs; and the Florida Prepaid College Board.²

Florida Statutes generally require direct-support organizations to:

- Operate under written contract with the supported agency;
- Be governed by a board of directors; and
- Operate for the benefit of and in a manner consistent with the goals of the agency and in the best interest of the state.

Examples of current state direct-support organizations include the:

- Florida National Guard Foundation,
- Florida Juvenile Justice Foundation, and
- Florida Veterans Foundation.

Current Legislative Authority for Support Organizations for the Department of Elder Affairs, the Legislative Research Center and Museum at the Historic Capitol, and the Florida Historic Capitol Curator

¹ Sections 39.0011, 250.115, 267.1732, 267.1736, 288.1226, 292.055, 570.903, 744.7082, 944.802, 960.002, 985.672, 1001.453, 1004.28, 1004.70, and 1009.983, F.S.

² *Id.*

Currently, the Department of Elder Affairs and the Florida Historic Capitol Curator do not have legislative authority to create direct-support organizations.

Current law grants the Legislative Research Center and Museum at the Historic Capitol (center) authority to support the establishment of a citizen support organization to provide assistance, funding, and promotional support for the center.³ Section 272.129(4)(a), F.S., defines “citizen support organization” for the purposes of the subsection as an organization that is:

- A Florida corporation not for profit incorporated under the provisions of chapter 617 and approved by the Department of State;
- 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 real and personal property; and make expenditures to or for the direct or indirect benefit of the center;
- Determined by the center to be consistent with the goals of the center and in the best interests of the state; and
- Annually approved in writing by the center to operate for the direct or indirect benefit of the center.

The center may permit the citizen support organization to use the center’s fixed property and facilities under specified conditions, and the center may prescribe rules to mandate conditions with which the citizen support organization must comply in order to use the center’s fixed property or facilities. The center is prohibited from allowing the citizen support organization to use the center’s fixed property or facilities if such organization does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, gender, age, or national origin.⁴

The center’s citizen support organization must provide for an annual financial audit⁵, and all records of the citizen support organization constitute public records⁶. The center’s citizen support organization is authorized to collect rental fees, apply for and receive grants, and receive gifts and donations for the direct or indirect benefit of the center.⁷ All funds obtained through such rental fees, grants, gifts, and donations to the citizen support organization must be deposited into the account of the citizen support organization and used for the benefit of the center unless the citizen support organization is no longer authorized as required by the subsection, fails to comply with the requirements of the subsection, fails to maintain its tax-exempt status, or ceases to exist. If any of those events occur, all such funds will revert to the state.⁸

Florida Historic Capitol Curator

Chapter 272, F.S., contains provisions relating to the Florida Historic Capitol.

³ Section 272.129(4)(a), F.S.

⁴ Section 272.129(4)(b), F.S.

⁵ Section 272.129(4)(c), F.S.

⁶ Section 272.129(4)(d), F.S.

⁷ Section 272.129(4)(e), F.S.

⁸ Section 272.129(4)(f), F.S.

Section 272.135, F.S., creates the position of the Florida Historic Capitol Curator (curator) and provides that the Legislature will establish the qualifications for the position. The curator will be appointed by and serve at the pleasure of the President of the Senate and the Speaker of the House of Representatives.⁹

The curator must:

- Promote and encourage throughout the state knowledge and appreciation of the Florida Historic Capitol;
- Collect, research, exhibit, interpret, preserve, and protect the history, artifacts, objects, furnishings, and other materials related to the Florida Historic Capitol, except for archaeological research and resources; and
- Develop, direct, supervise, and maintain the interior design and furnishings of all space within the Florida Historic Capitol in a manner consistent with the restoration of the Florida Historic Capitol in its 1902 form.¹⁰

III. Effect of Proposed Changes:

Department of Elder Affairs Direct-Support Organization

The bill creates s. 430.82, F.S., authorizing the DOEA to establish a direct-support organization in order to provide assistance, funding, and support for the department in carrying out its mission.

The bill defines the direct-support organization as an organization that is:

- A Florida not for profit corporation;
- Incorporated under chapter 617, F.S.;
- Exempted from filing fees;
- Approved by the Department of State;
- Organized and operated exclusively to obtain funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer in its own name securities, funds, or property; and make expenditures to or for the benefit of the DOEA and Floridians who are age 60 or older; and
- Determined by the DOEA to be operating in a manner consistent with the goals of the department and in the best interest of the state.

The bill requires the direct-support organization to be governed by a board of at least five directors appointed by the secretary of the department. The bill provides that networks and partnerships involved in issues related to aging may recommend nominees for the board of directors to the department's secretary.

The bill provides for a board membership term in office of three years, except in the initial appointments where some members' terms are shortened in order to develop a staggered term expiration schedule. The bill allows members to be reappointed when their terms expire. The

⁹ Section 272.135(1), F.S.

¹⁰ Section 272.135(2), F.S.

secretary of the department or his or her designee shall serve as an ex officio member of the board.

The bill provides that members of the board must be current Florida residents and that a majority of the members shall be elders and knowledgeable about the department, its services, and its mission. The bill allows for members to be removed for cause with approval of a majority of the board members.

The bill requires a direct-support organization to operate under a written contract with the department. The contract, at a minimum, must provide for:

- Annual certification by the department that the organization is complying with the terms of the contract in a manner consistent with the purposes of the department and in the best interests of the state. Such certification shall be reported in the minutes of an official meeting of the organization;
- Reversion of moneys and property held by the organization if it is no longer approved to operate for the department or if the organization or the department ceases to exist; and
- The disclosure of the material provisions of the contract, including the distinction between the department and the direct-support organization to donors and all promotional and fund raising publications.

The bill authorizes the use of department property, facilities, and personnel by the direct-support organization and allows the department to contractually prescribe conditions for such use. The bill prohibits such use if the organization does not provide equal employment opportunities.

The bill requires the secretary's approval of any transaction or agreement between the direct-support organization for the DOEA and any other direct-support organization or entity.

Finally, the bill prescribes:

- A fiscal year that begins July 1 of each year and ends June 30 of the following year;
- That the direct-support organization submit, to the department, certain Internal Revenue Service filings; and
- That the organization provide for an annual financial audit in accordance with s. 215.981, F.S.

Authority of the Florida Historic Capitol Curator

The bill authorizes the Florida Historic Capitol Curator to work in conjunction with the Legislative Research Center and Museum in the performance of its mission by:

- Raising money;
- Submitting requests for and receiving grants;
- Receiving, holding, investing, and administering in the name of the Historic Capitol and the Legislative Research Center and Museum securities, funds, objects of value, or other real and personal property;
- Receiving gifts and donations for the direct or indirect benefit of the Historic Capitol; and
- Making expenditures to or for the direct or indirect benefit of the Historic Capitol.

Legislative Research Center and Museum and Florida Historic Capitol Direct-Support Organization

The bill creates s. 272.136, F.S., to authorize the Legislative Research Center and Museum (center) and the Capitol Curator (curator) to establish a direct-support organization to provide fundraising support for the Florida Historic Capitol and for the Legislative Research Center and Museum. The direct-support organization must be a Florida corporation, not for profit, incorporated under chapter 617, excepted from filing fees, and approved by the Department of State.

The bill provides the following requirements regarding governance of the direct-support organization:

- The direct-support organization will be governed by a board of directors who have demonstrated a capacity for supporting the mission of the Historic Capitol.
- Initial appointments to the board will be made by the President of the Senate and the Speaker of the House of Representatives at the recommendation of the center and the curator. Appointments thereafter will be made by the board.
- The board will consist of nine members who will be appointed to 3-year terms, except that the terms of the initial appointed members will be staggered so that three members are appointed for 1 year, three members are appointed for 2 years, and three members are appointed for 3 years.
- The board may add up to two additional members.
- The board members will not receive compensation for their service, but they are entitled to receive reimbursement for per diem and travel expenses.
- The board may use the fixed property and facilities of the Historic Capitol, subject to the provisions of the subsection, so long as the use is directly in keeping with the approved purposes of the direct-support organization and is not made at times or places that would unreasonably interfere with the normal operations of the Historic Capitol.

The bill provides the following requirements regarding the operation of the direct-support organization:

- The curator and center may prescribe any condition with which the direct-support with which the direct-support organization must comply.
- The curator and the center may not permit the use of any fixed property or facilities by the direct-support organization if the organization does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, gender, age, or national origin.
- The direct-support organization must provide for an annual financial audit.

If the direct-support organization is no longer authorized by the section, fails to comply with the requirements of the section, fails to maintain its tax-exempt status, or ceases to exist, all funds obtained through grants, gifts, and donations in the direct-support organization account will revert to the state.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill is linked to Senate Bill 648, which provides that a donor or prospective donor to the DOEA direct-support organization may request that all information identifying such donor or prospective donor be kept confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Senate Bill 648 further provides that portions of meetings of the direct-support organization during which the identify of donors or prospective donors is discussed are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution.

Some of the direct-support organization functions to be authorized by the creation of s. 272.136, F.S., may be duplicative of those already provided for by the authorization of a citizen support organization for the Legislative Research Center and Museum under s. 272.129(4), F.S.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on April 16, 2009:

The committee substitute corrects a technical deficiency pertaining to the requirements for board members of the Department of Elder Affairs direct-support organization. The committee substitute clarifies that the filing fees that the Department of Elder Affairs direct-support organization must be exempt from are those in s. 617.0122, F.S.

The committee substitute adds subsection (3) to s. 272.135, F.S., to authorize the Florida Historic Capitol Curator to work in conjunction with the Legislative Research Center and Museum in the performance of its mission. It specifies the ways in which the Capitol Curator may do so.

The committee substitute creates s. 272.136, F.S., to authorize the Legislative Research Center and Museum and the Capitol Curator to establish a direct-support organization to provide fundraising support for the Florida Historic Capitol and for the Legislative Research Center and Museum. It provides requirements for the organization, governance, and operation of the direct-support organization. It also provides that funds obtained by the direct-support organization will revert to the state if certain conditions occur.

- B. **Amendments:**

None.