

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: SB 7022

INTRODUCER: Environment and Natural Resources Committee

SUBJECT: Fish and Wildlife Conservation Commission Citizen Support Organizations

DATE: March 26, 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>	Pre-meeting

I. Summary:

SB 7022 deletes the scheduled repeal of provisions governing citizen support organizations established under the Fish and Wildlife Conservation Commission, allowing the existing citizen support organizations to continue operating and providing benefits to the commission.

The bill authorizes courts to order a person convicted of a violation of commission rules or orders to pay an assessment to Wildlife Alert Reward Association, Inc., allowing courts to continue an existing practice that provides a significant portion of Wildlife Alert Reward Association, Inc.'s funding. The bill authorizes Wildlife Alert Reward Association, Inc., to pay rewards from assessments collected by court order to persons who provide information leading to the arrest of a person for a violation of the FWC rules or orders.

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.

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.

Section 379.223, F.S., authorizes the Fish and Wildlife Conservation Commission (FWC) to establish CSOs to provide assistance, funding, and promotional support for FWC programs.

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 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,

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.*

⁹ *Id.*

¹⁰ Section 20.058(3), F.S.

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.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

Fish and Wildlife Conservation Commission

The FWC is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources.¹⁸ The FWC is governed by a board of seven members who are appointed by the Governor and confirmed by the Florida Senate to five-year terms.¹⁹ Under Article IV, Section 9 of the Florida Constitution, the FWC is granted the authority to exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life. The Legislature may enact laws that aid the FWC in its exercise of regulatory functions and executive powers in the areas of planning, budgeting, personnel management, and purchasing.²⁰

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.

¹⁸ FLA. CONST. art. IV, s. 9.

¹⁹ *Id.*; *see also* section 379.102(1), F.S.

²⁰ FLA. CONST. art. IV, s. 9.

Fish and Wildlife Conservation Commission CSOs

The FWC is authorized to establish CSOs to provide assistance, funding, and promotional support for commission programs.²¹ The CSOs are organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; and make expenditures for the benefit of the FWC. However, CSOs may not receive funds from the FWC or the Fish and Wildlife Research Institute by grant or gift unless specifically authorized by the Legislature.²² The FWC may permit its CSOs to use the FWC property, facilities, and personnel free of charge, as long as such use does not unreasonably interfere with normal the FWC operations.²³

The FWC holds agreements with two CSOs: Fish & Wildlife Foundation of Florida, Inc. and Wildlife Alert Reward Association, Inc. The statute that authorizes the CSOs for the FWC is repealed October 1, 2019, unless reviewed and saved from repeal beforehand by the Legislature.²⁴

Fish & Wildlife Foundation of Florida, Inc.

Fish & Wildlife Foundation of Florida, Inc. (Foundation) was formed in 1994 to support the health and well-being of Florida's fish and wildlife resources and their habitats. According to its website, the Foundation has raised and donated more than \$30 million in grant funds for conservation and outdoor recreation since its founding in 1994.²⁵ The Foundation focuses its projects on providing outdoor education and recreational opportunities for youth, wildlife conservation, reefs, and hunting and shooting sports.²⁶

The Foundation is involved with several programs related to conservation, including launching a rare plant conservation endowment, funding captive breeding of wildlife species, providing funds for communities and homeowners to purchase bear-proof garbage cans to reduce bear-human interactions, helping expand panther rehabilitation facilities and identifying ways of reducing panther-car collisions, and underwriting research on freshwater springs restoration and management.²⁷

As stated on its website, the Foundation is the largest private funder of youth outdoor education and works with the Florida Youth Conservation Centers Network to provide outdoor experiences to more than 200,000 children and teens annually through summer camp scholarships, school field trip funds, outdoor gear, and educational materials.²⁸ The Foundation recently completed

²¹ Section 379.223, F.S.

²² Section 379.223(1)(b), F.S.

²³ Section 379.223(2)(a), F.S.

²⁴ Section 379.223(4), F.S.

²⁵ Fish and Wildlife Foundation of Florida, Inc., *About Us*, <https://wildlifeflorida.org/our-mission/> (last visited Feb. 6, 2019).

²⁶ Fish and Wildlife Foundation of Florida, Inc., *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 *Foundation Presentation*].

²⁷ Fish and Wildlife Foundation of Florida, Inc., *Conserving Wildlife*, <https://wildlifeflorida.org/wildlife/> (last visited Feb. 6, 2019).

²⁸ Fish and Wildlife Foundation of Florida, Inc., *Getting Kids Back to Nature*, <https://wildlifeflorida.org/youth-programs/> (last visited Feb. 6, 2019).

funding for a wheelchair-accessible boardwalk and fishing pier at the Suncoast Youth Conservation Center. The Foundation is working with the FWC to fund renovation of the historic Everglades Youth Conservation Camp, which has hosted more than 25,000 children and teens since the early 1960s.²⁹

The Foundation successfully manages its initiatives with support from various sources. The Foundation raises funds for its conservation projects through the sale of Florida's conservation license plates.³⁰ The Foundation also generates funds through one-on-one major gift fundraising, direct mail and electronic solicitations, and an annual dinner and auction.³¹

Senate Professional Staff Review of the FWC and the Foundation

The statutory authority for the FWC's CSOs is scheduled to repeal on October 1, 2019, unless reviewed and saved from repeal by the Legislature.³² Professional staff of the Senate Committee on Environment and Natural Resources reviewed the Foundation to verify its compliance with applicable Florida Statutes. After reviewing the submitted documents and other requirements to which the Foundation is subject, staff found that the Foundation is an active CSO that supports Florida's fish and wildlife and provides educational opportunities to youth. Staff concluded that it appears the Foundation is in substantial compliance with its enabling legislation, s. 379.223, F.S., as well as the CSO requirements in s. 20.058, F.S.

The Foundation and the FWC have a letter of agreement and memorandum of understanding which serve as a written approval of the CSO by the commission.³³ However, the authorization lacks specific parameters. The agreements do not provide guidance on the general operation or management of funds. Statutory provisions require that any contract between an agency and a CSO contain a provision stating that if the statutory authorization is repealed, the contract is terminated, or the organization is dissolved, the CSO must cease operations and return funds to the state within 30 days.³⁴ The written authorization does not provide guidance on the CSO's use of state property or the provision of equal membership as required by statute. There is no guidance on the use of funds for proper purposes. However, the FWC has indicated that it is drafting an agreement with the Foundation that includes the statutorily required provisions.³⁵ The Foundation has committed to revising its existing contracts to include the statutorily required provisions.³⁶

²⁹ *Foundation 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).

³⁰ Fish and Wildlife Foundation of Florida, Inc., *Buy A Plate*, <https://wildlifeflorida.org/buy-a-plate/> (last visited Feb. 6, 2019).

³¹ *Foundation 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).

³² Section 379.223, F.S.

³³ Letter of Agreement between FWC and Wildlife Foundation of Florida (Apr. 3, 2003) (on file with Senate Committee on Environment and Natural Resources).

³⁴ Section 20.058, F.S.

³⁵ Email from Jennifer Fitzwater, Chief of Staff, FWC, to Senate Committee on Environment and Natural Resources professional staff (Jan. 22, 2019) (on file with the Senate Committee on Environment and Natural Resources).

³⁶ Email from Andrew Walker, President and CEO, Foundation, to Senate Committee on Environment and Natural Resources professional staff (Dec. 28, 2018) (on file with the Senate Committee on Environment and Natural Resources).

The Foundation has substantially complied with specific statutory requirements and has posted its organization documents, IRS forms, and annual audit on its website.³⁷ The Foundation has complied with statutory ethics requirements and has posted its code of ethics on its website.³⁸ Each CSO with annual expenditures in excess of \$100,000 must provide for an annual financial audit of its accounts and records pursuant to statutory requirements. The Foundation's annual expenses for 2017 totaled \$4,686,730, an amount that exceeds the annual audit requirement.³⁹ The Foundation conducts annual audits and the operating expenses described in the audit are presented in the chart below.⁴⁰

FISH & WILDLIFE FOUNDATION OF FLORIDA, INC.
STATEMENTS OF OPERATING EXPENSES
FOR THE YEAR ENDED JUNE 30, 2017
WITH COMPARATIVE TOTALS FOR THE YEAR ENDED JUNE 30, 2016

Program	Administrative and Office	Fundraising	2017 Total	2016 Total
Expenses				
Accounting and Legal Expense	\$ 6,165	\$ 30,288	\$ -	\$ 36,452
Advertising Expenses	41,777	7,889	-	49,667
Business Registration Fees	-	488	-	488
Cash Awards and Grants	4,034,075	-	-	4,034,075
Employee Benefits	34,190	41,787	-	75,977
Fundraising	-	-	11,889	11,889
Fundraising - Donated	-	-	-	16,285
Insurance	-	8,223	-	8,223
Investment Account Charges	97,779	1,424	-	99,204
Meeting Expense	18,549	4,722	-	23,270
Merchant Account Fees	29,085	1,341	-	30,426
Miscellaneous Expenses	5,666	45,911	-	51,576
Occupancy	300	1,078	-	1,378
Occupancy - Donated	10,583	12,935	-	23,518
Outside Contract Services	73,479	975	-	74,454
Outside Contract Services- Donated	-	82,544	-	82,544
Payments in Accordance with Trust & Fund Agreements	105,089	-	-	105,089
Payroll Taxes	16,136	19,722	-	35,857
Payroll Taxes - Donated	-	-	-	803
Postage	-	1,540	-	1,540
Printing and Copying	-	2,201	-	2,201
Salaries and Wages	193,463	236,455	-	429,919
Salaries and Wages - Donated	-	-	-	10,500
Supplies	-	3,813	-	3,813
Telephone and Telecommunications	1,466	700	-	2,166
Transfer of Assets Held for Others	(6,042)	-	-	(6,042)
Travel	11,776	13,512	-	25,288
Web Site Fees	12,212	2,844	-	15,056
Total Expenses Before Depreciation	4,685,747	520,390	11,889	5,218,026
Depreciation Expense	983	-	-	983
TOTAL EXPENSES	\$ 4,686,730	\$ 520,390	\$ 11,889	\$ 5,219,009
	\$ 8,878,422			

Staff finds that while the Foundation has substantially complied with many of its statutory requirements, the lack of contractual guidance on the operations and management of the

³⁷ Fish and Wildlife Foundation of Florida, Inc., *Organizational Documents*, <https://wildlifeflorida.org/organizational-documents/> (last visited Feb. 6, 2019).

³⁸ *Id.*

³⁹ Fish and Wildlife Foundation of Florida, Inc., *Financial Statements and Supplementary Information*, June 30, 2017 and 2016, available at <https://wildlifeflorida.org/wp-content/uploads/2018/05/Audited-Financial-Statements-2017-1.pdf> (last visited Feb. 6, 2019).

⁴⁰ *Id.* at 8.

Foundation funds should be addressed. The FWC and the Foundation have indicated that they are drafting an agreement with more detailed guidance that includes the statutorily required provisions and will amend existing contracts to resolve the contractual deficiencies. Staff recommends repealing the sunset date for future legislative review of the FWC CSOs to allow for the organizations' continued operation.

Wildlife Alert Reward Association, Inc.

The Wildlife Alert Reward Association, Inc. (Wildlife Alert) is a non-profit program, created in 1979, which offers rewards to members of the public in exchange for information leading to the arrest of poachers or other violators of the state's fish, wildlife, environmental, and boating laws.⁴¹ Wildlife Alert's goal is to provide incentives for concerned citizens to report witnessed violations.⁴² The reward categories range from \$100 to \$600 for reporting violations such as illegal hunting, taking saltwater game fish out of season, taking protected wildlife species, boating under the influence, and illegal tire dumping.⁴³

Most of Wildlife Alert's funding comes from judges requiring violators to make donations to Wildlife Alert in addition to any penalty assessed for a violation of the law.⁴⁴ When a violator is arrested and convicted in court, judges often order that a donation be made to the Wildlife Alert Reward Fund separate from any fines ordered.⁴⁵ Funds from such donations are used to pay rewards for reporting violations and for promotion of the Wildlife Alert program. In 2017, Wildlife Alert paid a total of \$16,700 for 64 rewards and collected \$77,579.88 in fines.⁴⁶

Senate Professional Staff Review of the FWC and Wildlife Alert

The statutory authority for the FWC CSOs is scheduled to repeal on October 1, 2019, unless reviewed and saved from repeal by the Legislature.⁴⁷ Professional staff of the Senate Committee on Environment and Natural Resources reviewed Wildlife Alert to verify its compliance with applicable Florida Statutes. After reviewing the submitted documents and other requirements to which Wildlife Alert is subject, staff found that Wildlife Alert is an active CSO that supports Florida's fish and wildlife species and provides rewards to incentivize members of the public to report violators. Staff concluded that it appears Wildlife Alert is in compliance with its enabling legislation, s. 379.223, F.S., as well as the general CSO requirements in s. 20.058, F.S.

Staff identified a few deficiencies where the FWC and Wildlife Alert are not in full compliance with the applicable Florida Statutes. Wildlife Alert and the FWC have a letter of agreement and memorandum of understanding which serve as a written approval of the CSO by the

⁴¹ Florida Fish and Wildlife Conservation Commission, *Wildlife Alert brochure* (Sept. 2018) (on file with the Senate Committee on Environment and Natural Resources).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Email from Jessica Crawford, Legislative Affairs Director, Fish and Wildlife Conservation Commission, to Senate Committee on Environment and Natural Resources professional staff (Nov. 16, 2018) (on file with the Senate Committee on Environment and Natural Resources).

⁴⁵ *Id.*

⁴⁶ FWC, *Citizen Support Organization Direct-Support Organization 2018 Annual Report* (Aug. 15, 2018), available at <https://myfwc.com/media/19043/cso-annualreport2017-18.pdf> (last visited Feb. 11, 2019).

⁴⁷ Section 379.223(1), F.S.

commission.⁴⁸ However, the authorization lacks specific parameters. The agreement does not provide guidance on the general operation or management of funds. The statutory provisions require that any contract between an agency and a CSO contain a provision stating that if the statutory authorization is repealed, the contract is terminated, or the organization is dissolved, the CSO must cease operations and return funds to the state within 30 days.⁴⁹ The written authorization does not provide guidance on the CSO's use of state property or the provision of equal membership as required by statute. There is no guidance on the use of funds for proper purposes. However, the FWC has indicated that it is drafting an agreement with Wildlife Alert that includes the statutorily required provisions.⁵⁰

Wildlife Alert has substantially complied with specific statutory requirements. Wildlife Alert has an ethics code pursuant to statutory requirements, which is posted on the FWC's website in the CSO annual report.⁵¹ Wildlife Alert did not submit an annual audit because its annual expenditures were below the statutory threshold limits.⁵²

Although most of Wildlife Alert's funding comes from judges requiring violators to make donations to Wildlife Alert, this practice is not supported by case law, which indicates that courts must have statutory authority to order a defendant to make a charitable contribution.⁵³ Staff recommends that this practice be clearly authorized in statute to continue providing funding to the CSO.

Staff finds that while Wildlife Alert has substantially complied with many of its statutory requirements, the lack of contractual guidance on the operations and management of Wildlife Alert funds should be addressed. The FWC and Wildlife Alert have indicated that they are drafting an agreement that includes the statutorily required provisions, which would resolve the contractual deficiencies. Staff recommends repealing the sunset date for future legislative review of the FWC CSOs to allow for the organizations' continued operation.

III. Effect of Proposed Changes:

The bill deletes the scheduled repeal of provisions governing citizen support organizations established under the Fish and Wildlife Conservation Commission (FWC), allowing the organizations to continue operating.

The bill provides statutory authorization to courts to continue an existing practice of ordering a person convicted of a violation of the FWC rules or orders to pay an assessment to Wildlife Alert Association, Inc. The bill authorizes Wildlife Alert to pay a reward from the assessments

⁴⁸ Letter of Agreement between FWC and Wildlife Alert Reward Association, Inc. (Sept. 25, 2014) (on file with Senate Committee on Environment and Natural Resources).

⁴⁹ Section 20.058, F.S.

⁵⁰ Email from Jennifer Fitzwater, Chief of Staff, FWC, to Senate Committee on Environment and Natural Resources professional staff (Jan. 22, 2019) (on file with the Senate Committee on Environment and Natural Resources).

⁵¹ FWC, *Citizen Support Organization Direct-Support Organization 2018 Annual Report* (Aug. 15, 2018), available at <https://myfwc.com/media/3887/csoannualreport.pdf> (last visited Feb. 6, 2019).

⁵² Section 215.981, F.S.

⁵³ See *Bell v. State*, 216 So. 3d 751 (Fla. 5th DCA 2017); see also *Antosh v. State*, 510 So. 2d 1158 (Fla. 3d DCA 1987); see also *Cumberland v. State*, 225 So. 3d 952 (Fla. 5th DCA 2017).

collected by court order to persons who provide information leading to an arrest of a person for a violation of the FWC rules or orders.

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 statute governing the FWC's CSOs from repeal, the bill sustains a source of funding, promotional support, and other assistance that benefits Florida citizens, youth, and various wildlife species.

C. Government Sector Impact:

The bill has no fiscal impact on state funds, however, by saving the statute governing the FWC's CSOs from repeal, the bill allows the Foundation to continue benefitting the FWC and providing valuable research and support to assist the FWC in meeting its goals. It allows Wildlife Alert to continue to benefit the FWC by incentivizing members of the public to provide information leading to the arrest of poachers or other violators of fish and wildlife laws.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 379.223 of the Florida Statutes.

This bill creates section 379.2231 of the Florida Statutes.

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.