

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 Agriculture

BILL: SPB 7062

INTRODUCER: For consideration by Agriculture Committee

SUBJECT: Department of Agriculture and Consumer Services Citizen Support Organizations and Direct-support Organizations

DATE: March 1, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Becker</u>	<u> </u>	<u>Pre-meeting</u>
2.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
3.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
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6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

SPB 7062 removes the scheduled repeal date of the law authorizing the Florida Department of Agriculture and Consumer Services (department) to establish direct-support organizations (DSO) to provide assistance, funding, and support to assist the department in furthering its goals. These DSOs are:

- Friends of the Florida State Forests
- Forestry Arson Alert Association, Inc.
- Florida Agricultural Museum
- Florida Agriculture in the Classroom, Inc.
- Florida Agriculture Center and Horse Park Authority
- Living Healthy in Florida, Inc.
- Florida Beef Council, Inc.

SPB 7062 also extends the repeal date for the Friends of the Babcock Ranch Preserve, Inc., which serves as a citizen support organization (CSO) within the department, from October 1, 2019 to October 1, 2024.

Professional staff of the Senate Committee on Agriculture reviewed documents related to the DSOs and the CSO for compliance with the authorizing and accountability statutes and finds that they are in compliance with statutory requirements.

II. Present Situation:

Citizen Support Organizations and Direct-Support Organizations

DSOs and CSOs are statutorily created non-profit organizations¹ authorized to assist or support governmental entities in carrying out their duties. The function and purpose of a DSO or CSO is prescribed by an enacting statute and a written contract with the agency the DSO or CSO supports.²

Transparency and Reporting Requirements

In 2014, the Legislature created s. 20.058, F.S., establishing a comprehensive set of transparency and reporting requirements for DSOs and CSOs.³ Specifically, the law requires each DSO or CSO to annually submit the following information to the appropriate agency by August 1:⁴

- 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 ethics code; and
- A copy of the organization's most recent Internal Revenue Service (IRS) Form 990.⁵

Each agency receiving information from a DSO or CSO pursuant to law must make such information available to the public through the agency's website.⁶ If the organization maintains a website, the agency's website must provide a link to the organization's website.⁷ Any contract between an agency and a DSO or CSO must be contingent upon the DSO or CSO submitting and posting the required information to the agency as specified in law.⁸ If a DSO or CSO fails to submit the required information to the agency for two consecutive years, the agency head must terminate any contract between the agency and the DSO or CSO.⁹

By August 15 of each year, the agency must report to the Governor, President of the Senate, Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability (OPPAGA) the information submitted by each DSO and CSO along with the agency's recommendation and supporting rationale to continue, terminate, or modify the agency's association with the DSO or CSO.¹⁰

¹ Chapter 617, F.S.

² See ss. 14.29(9)(a), 16.616(1), and 258.015(1), F.S. See also Rules of the Florida Auditor General, *Audits of Certain Nonprofit Organizations* (effective June 30, 2016), Rule 10.720(1)(b) and (d), available at http://www.myflorida.com/audgen/pages/pdf_files/10_700.pdf (Last visited February 28, 2019).

³ Section 3, ch. 2014-96, L.O.F.

⁴ Section 20.058(1), F.S.

⁵ 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. 26 C.F.R. 1.6033-2.

⁶ Section 20.058(2), F.S.

⁷ *Id.*

⁸ Section 20.058(4), F.S.

⁹ *Id.*

¹⁰ Section 20.058(3), F.S.

Any law creating, or authorizing the creation of a DSO or CSO must state that the authorization for the organization repeals on October 1 of the 5th year after enactment unless reviewed and reenacted by the Legislature. All DSOs and CSOs in existence prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019.¹¹

Audit Requirements

Section 215.981, F.S., requires each DSO or CSO with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.¹² An independent certified public accountant in accordance with rules adopted by the Auditor General must conduct the audit. 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 DSO or CSO supports.¹³

Additionally, the Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of a DSO's or CSO's accounts and records.¹⁴

Ethics Code Requirement

Section 112.3251, F.S., requires DSOs and CSOs to adopt a code of ethics. The code of ethics must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S.¹⁵ A DSO or CSO may adopt additional or more stringent standards of conduct and disclosure requirements and must post its code of ethics on its website.¹⁶

Florida Department of Agriculture and Consumer Services

The department supports and promotes Florida agriculture, protects the environment, safeguards consumers, and ensures the safety and wholesomeness of food.¹⁷ The following DSOs assist or support the department in carrying out its duties:

- **Friends of the Florida State Forests** – Through community support, it assists the Florida Forest Service to expand opportunities for recreation (hunting, horseback riding, hiking, Off Highway Vehicle, etc.), environmental education, and forest management within Florida's state forests.
- **Forestry Arson Alert Association, Inc.** – Through internal and external support, it helps reduce the incidence of wildland arson by making it possible to offer rewards for information leading to an arrest of arsonists. It also increases public awareness about wildland arson and the destruction it can cause.

¹¹ Section 20.058(5), F.S.

¹² The independent audit requirement does not apply to a 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 DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.

¹³ Section 215.981(1), F.S.

¹⁴ Section 11.45(3), F.S.

¹⁵ Some of the standards of conduct and disclosures in ss. 112.313 and 112.3143(2), F.S., include misuse of public position, solicitation or acceptance of gifts, unauthorized compensation, and voting conflicts.

¹⁶ Section 112.3251, F.S.

¹⁷ <https://www.freshfromflorida.com/About/>

- **Florida Agricultural Museum** - With the assistance of volunteers, it preserves Florida's agricultural past, interprets agricultural issues of yesterday, today, and tomorrow, and educates the public about those issues through enjoyable experiences such as guided horseback trail rides, farmers markets, and learning about Florida's rare heritage Cracker cattle, horses, and sheep.
- **Florida Agriculture in the Classroom, Inc.** – The agriculture specialty license plate funds FAITC's ability to reach out to teachers and students in kindergarten through 12th grade with a website of more than 100 agriculture-related lessons and activities, teacher school garden workshops and related farm tours on how to use agriculture lessons to teach core subjects, school garden curricula and grants programs, and the elementary school reading program Florida Agriculture Literacy Day.
- **Florida Agriculture Center and Horse Park Authority** – Through internal and external support, it is a recreational and sporting organization dedicated to developing an international facility with opportunities for equine, agriculture, livestock, recreation, and educational events.
- Living Healthy in Florida, Inc. – Seventeen private sector partners work with numerous state agencies, individuals, organizations, and communities to share ideas and best practices to optimize health and wellness.
- **Florida Beef Council, Inc.** – The federal Beef Promotion and Research Act was passed as part of the 1985 Farm Bill and provides the mission and the base for development of a producer-funded beef promotion and research program, the national Beef Checkoff Program, aimed at building demand for beef and beef products, both domestically and internationally.¹⁸ The act required cattle producers to pay a fee, or “checkoff” on all sales of cattle to fund advertisements for the cattle industry. This act was challenged by cattle producers who disagreed with the content of those advertisements and brought action against the United States Department of Agriculture alleging that the government-required fee for advertising violated their First Amendment right to free speech. In response to this challenge, the Florida cattle industry worked with the Legislature to create the Beef Market Development Act in the event that they decided to hold a referendum to start a state “checkoff” program. The act included the Florida Beef Council, Inc., which was created to operate as a DSO within the department. Since the original federal challenge was not successful, the council was never set up as a DSO of the department. There is currently another challenge before the United States Court of Appeals for the Ninth Circuit, and therefore the Florida producers have requested that the DSO remain in statute in the event that they decide to move forward with a state program.¹⁹

The following CSO assists or supports the department in carrying out its duties:

- **Friends of the Babcock Ranch Preserve, Inc.** – The Babcock Ranch acquisition was one of the largest preservation purchases in the history of Florida and was made possible through the Babcock Ranch Preserve Act that was passed by the Legislature in 2006. The Act authorized the Babcock Ranch Preserve (preserve) as a working ranch and to protect regionally important water resources, diverse natural habitats, scenic landscapes and historic and cultural resources in southwest Florida. Public recreational opportunities include hunting,

¹⁸ https://www.beefboard.org/library/beefact_order.asp (Last visited February 28, 2019).

¹⁹ Information provided by the Department of Agriculture and Consumer Services on file in the Senate Agriculture office.

hiking, wildlife viewing, bicycling, fishing, camping and horseback riding.²⁰

Section 259.10521, F.S., authorizes the creation of a CSO to 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 property, real or personal. It may also make expenditures to or for the direct or indirect benefit of the Babcock Ranch Preserve. The Friends of the Babcock Ranch Preserve, Inc., will be established when the sale agreement for the Babcock Ranch Preserve is completed. It is anticipated that it will be in place before the end of the year.²¹

III. Effect of Proposed Changes:

Section 1 amends s. 259.10521, F.S., to extend the repeal date for the Friends of the Babcock Ranch Preserve, Inc., which serves as the citizen support organization within the department from October 1, 2019 to October 1, 2024.

Section 2 amends s. 570.83, F.S., to remove the scheduled repeal date for the law governing the Florida Beef Council, Inc., which serves as the direct-support organization within the department.

Section 3 amends s. 570.691, F.S., to remove the scheduled repeal date for the law governing the following direct-support organizations within the department:

- Friends of the Florida State Forests
- Forestry Arson Alert Association, Inc.
- Florida Agricultural Museum
- Florida Agriculture in the Classroom, Inc.
- Florida Agriculture Center and Horse Park Authority
- Living Healthy in Florida, Inc.

Section 4 provides that this act shall take effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁰ April 4, 2013, analysis of CS/CS/SB 1628.

²¹ Information provided by the Department of Agriculture and Consumer Services on file in the Senate Agriculture office.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 259.10521, 570.83, and 570.691

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.