

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 Governmental Oversight and Accountability

BILL: SB 1040

INTRODUCER: Senator Burgess

SUBJECT: District School Board Direct-support Organizations

DATE: April 4, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jahnke</u>	<u>Bouck</u>	<u>ED</u>	Favorable
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1040 authorizes district school boards to contract with a direct-support organization (DSO) for personal services or operations. The bill revises the threshold of expenditures and expenses that requires a DSO to 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.

The bill has no impact on state revenues or expenditures.

The bill is effective July 1, 2023.

II. Present Situation:

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 not-for-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

¹ Section 3, ch. 2014-96, Laws of Fla.

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. CSOs and DSOs in existence prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019.⁹

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.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,

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.

¹⁰ 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.

approved, or administers the CSO or DSO. 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.¹¹ The Auditor General is authorized to require and receive any records from the CSO or DSO, or its independent auditor.¹²

District School Board Direct-Support Organization

A district school board DSO is an organization that:¹³

- Is approved by the district school board.
- Is a Florida not-for-profit corporation.
- Is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of public kindergarten through grade 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.¹⁴

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 services¹⁵ 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.

District School Board DSO Audit Requirements

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.¹⁶ The audit must be conducted by an independent certified public accountant in accordance with the rules adopted by the Auditor General¹⁷ and the Commissioner of Education.¹⁸ 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 Office of

¹¹ Section 11.45(3)(d), F.S.

¹² *Id.*

¹³ Section 1001.453, F.S.

¹⁴ Section 1001.453(3), F.S.

¹⁵ Section 1001.453(1)(b), F.S. Personal services includes full-time or part-time personnel, as well as payroll processing.

¹⁶ Section 1001.453(4), F.S.

¹⁷ Section 11.45(8), F.S.

¹⁸ Section 1001.453(4), F.S.

Program Policy Analysis and Government Accountability have the authority to require and receive from the organization or the district auditor any records relative to the operation of the organization.¹⁹

III. Effect of Proposed Changes:

The bill amends s. 1001.453, F.S., to authorize district school boards to contract with a direct-support organization for personal services or operations. The bill increases from \$100,000 to \$250,000 the threshold of expenditures and expenses to require a direct-support organization (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 direct-support organization.

Audit fees can be significant for large nonprofits located in major urban areas and are often daunting even for small nonprofits.²⁰ Audits can be time-consuming and expensive, typically ranging from \$10,000 to \$20,000 depending on a nonprofit's size, according to the National Council of Nonprofits.²¹ Increasing the threshold for requiring a DSO to provide an annual financial audit and allowing district school boards to contract with a vendor could reduce the burden of this annual cost for smaller DSOs.

The bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹⁹ Section 1001.453(4), F.S.

²⁰ National Council of Nonprofits, *What is an independent audit?* <https://www.councilofnonprofits.org/running-nonprofit/nonprofit-audit-guide/what-independent-audit> (last visited March 9, 2023).

²¹ 501(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 March 9, 2023).

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill is not expected to impact state revenues and expenditures. The bill may impact the expenditures of a school district if the district chooses to contract with a vendor to complete the annual financial audit of a DSO.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Current law relating to the Florida Retirement System requires an employee to terminate his or her employment in order to commence a retirement benefit, either before or after normal retirement age. The determination of whether a bona fide termination from employment has occurred is critical for both the tax qualification of the FRS and Florida statutory compliance purposes.

To address the requirement of bona fide termination, the FRS states “termination” occurs “when a member ceases all employment relationships with participating employers.”

Lines 24 and 25 authorize a district school board to contract with a DSO personal services or operations. If the DSO employs an FRS retiree to provide these services within 12 months of the retiree’s retirement date, the retiree may be deemed to be a reemployed retiree. If such services are provided with the first six months of retirement, the retiree’s termination may be deemed not to have occurred²², and the retiree and the employer will be jointly liable for the repayment of any retirement benefits, including accumulations in the retiree’s Deferred Retirement Option Program account.²³ If such services are provided between months 7 and 12 of retirement, the retiree’s monthly retirement benefit may be suspended until month 13 of retirement.²⁴ The only

²² Section 121.021(39)(a)2., F.S.

²³ Section 121.091(9)(c)3., F.S.

²⁴ Section 121.091(9)(c), F.S.

statutory exception to the suspension of benefits applies to a retired law enforcement officer reemployed as a school resource officer.²⁵

Consideration should be given to limiting the school board's authority to contract for personal services so that an FRS retiree is not inadvertently reemployed in a manner that causes the retiree's termination to be deemed not to have occurred.

VIII. Statutes Affected:

This bill substantially amends section 1001.453 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁵ Section 121.091(9)(f), F.S.