

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1036

SPONSOR: Appropriations Subcommittee on General Government and Senator Dockery and others

SUBJECT: Citizen Support Organization Audits

DATE: April 10, 2003

REVISED: \_\_\_\_\_

|    | ANALYST        | STAFF DIRECTOR | REFERENCE  | ACTION                   |
|----|----------------|----------------|------------|--------------------------|
| 1. | <u>Rhea</u>    | <u>Wilson</u>  | <u>GO</u>  | <u>Fav/1 amendment</u>   |
| 2. | <u>Molloy</u>  | <u>Kiger</u>   | <u>NR</u>  | <u>Favorable</u>         |
| 3. | <u>DeLoach</u> | <u>Hayes</u>   | <u>AGG</u> | <u>Favorable/CS</u>      |
| 4. | _____          | _____          | <u>AP</u>  | <u>Withdrawn: Fav/CS</u> |
| 5. | _____          | _____          | _____      | _____                    |
| 6. | _____          | _____          | _____      | _____                    |

## I. Summary:

The committee substitute amends the audit requirements established in s. 215.981, F.S., for direct-support organizations (DSOs) and citizen support organizations (CSOs). Specifically, the bill establishes an annual expenditure threshold of more than \$100,000 for non-educational DSOs and CSOs, excluding those of the Department of Environmental Protection, prior to requiring an annual financial audit of its accounts and records by an independent certified public accountant.

For those DSOs and CSOs of the Department of Environmental Protection, this bill establishes a \$300,000 annual expenditure threshold before an independent audit is required. The Department is required to establish accounting and financial management guidelines and conduct reviews of those with those expenditures below the threshold.

This bill amends s. 215.981, Florida Statutes.

## II. Present Situation:

A variety of public-private nonprofit entities have been authorized in statute to assist state government in the performance of activities that benefit the public. Direct-support organizations (DSOs) and citizen-support organizations (CSOs) are two types of these authorized entities. A primary distinction between CSOs and DSOs is that CSOs are created by private citizens and receive a letter of approval from a department if the CSO meets the statutory requirements, whereas a DSO typically is created or authorized in statute.

### Direct-Support Organizations

While no general statutory definition for a direct-support organization is provided in statute, a DSO is a Florida not-for-profit corporation, incorporated under the provisions of ch. 617, F.S., and authorized by law to benefit or to provide assistance to a governmental entity. Typically, a state entity has a higher level of involvement in and oversight of a DSO. For example, each DSO tends to be specifically authorized or created in statute. The authorizing statute often establishes requirements for the articles of incorporation, as well as other oversight requirements. Further, board members sometimes may be appointed by the secretary of the department to which the DSO is attached, public officers or employees may be placed on the corporate board of the DSO, or both.

Direct-support organizations are provided in statute for numerous departments and programs. These include the Department of Education,<sup>1</sup> District School Boards,<sup>2</sup> Community Colleges,<sup>3</sup> the Department of Corrections,<sup>4</sup> and the Department of Juvenile Justice.<sup>5</sup>

Direct-support organizations are associated with various functions of the Office of Tourism, Trade and Economic Development in ch. 288, F.S., including sports promotion and economic development. Several commissions have statutory provisions for direct-support organizations, including the Florida Commission on Community Service, s. 14.29, F.S., the Florida Agriculture in the Classrooms Program, s. 570.903, F.S., and Assistance to Victims of Crime, s. 960.002, F.S.

Examples of the types of direct-support organizations that are affiliated with the State University System<sup>6</sup> as of March 2, 2001, for Florida State University and the University of Florida are:

#### FLORIDA STATE UNIVERSITY

- The Florida State University Alumni Association, Inc.
- Florida State University International Programs Assoc., Inc.
- FSU Financial Assistance, Inc.
- The Florida State University Foundation, Inc.
- Seminole Boosters, Inc.
- The Florida State University Research Foundation, Inc.

#### UNIVERSITY OF FLORIDA

- Florida 4-H Club Foundation, Inc.
- University of Florida National Alumni Association, Inc.
- Florida Association of Basic Medical Scientists, Inc.
- Florida Foundation Seed Producers, Inc.
- University of Florida Foundation, Inc.
- Gator Boosters, Inc.
- University of Florida Law Center Association, Inc.

<sup>1</sup> Section 229.8021, F.S.

<sup>2</sup> Section 237.40, F.S.

<sup>3</sup> Section 240.363, F.S.

<sup>4</sup> Section 944.802, F.S.

<sup>5</sup> Section 985.4145, F.S.

<sup>6</sup> In *Florida Senate Interim Project Report 98-25, Model Contracted Services Corporation*, it was reported that there were 43 university-related DSOs.

- University of Florida Research Foundation, Inc.
- University Athletic Association, Inc.
- Southwest Florida Research and Education Foundation, Inc.
- Treasure Coast Agricultural Research Foundation, Inc.
- University of Florida Leadership & Education Foundation, Inc.
- Citrus Research and Education Foundation, Inc.

### **Citizen Support Organizations**

Another private organization that is authorized to support a public purpose is the Citizen Support Organization or “CSO.” The two statutory definitions for CSOs specifically associate them with the Department of Environmental Protection, though there are CSOs that are not associated with that department. An example, the Wildlife Foundation of Florida, Inc., is connected to the Florida Fish & Wildlife Conservation Commission.

Section 20.2551(1), F.S., defines “citizen support organization” to mean:

- (a) A Florida corporation not for profit incorporated under the provisions of chapter 617 and approved by the Department of State;
- (b) 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 property, real or personal; and make expenditures to or for the direct or indirect benefit of the Department of Environmental Protection or individual units of the department. The citizen support organization may not receive funds from the department or the Florida Marine Research Institute by grant, gift, or contract unless specifically authorized by the Legislature;
- (c) Determined by the appropriate division of the *Department of Environmental Protection* to be consistent with the goals of the department and in the best interests of the state; and
- (d) Approved in writing by the department to operate for the direct or indirect benefit of the individual units of the department. Such approval shall be given in a letter of agreement from *the department* [*emphasis added*].

In addition to the statutory definition for CSOs found in s. 20.2551(1), F.S., another definition for CSOs is found in s. 258.015, F.S. That provision, which is a chapter of the *Florida Statutes* regulating state parks, provides a slightly narrower definition of a citizen support organization:

- (a) A Florida corporation not for profit incorporated under the provisions of chapter 617 and approved by the Department of State;
- (b) 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 property, real or personal; and make expenditures to or for the direct or indirect benefit of the state park system or individual units of the state park system;
- (c) Determined by the *Division of Recreation and Parks* of the Department of Environmental Protection to be consistent with the goals of the state park system and in the best interests of the state; and

- (d) Approved in writing by the division to operate for the direct or indirect benefit of the state park system or individual units in the state park system. Such approval shall be given in a letter of agreement from the *division*.

Section 20.2551(5), F.S., contains a statement of legislative recognition that many of the lands managed by the Department of Environmental Protection need a variety of facilities to enhance their use and potential. The lands and programs managed by the department are of interest to, and could benefit from the support of, local citizen groups. The facilities and programs include, but are not limited to:

- (a) improved access;
- (b) camping areas;
- (c) picnicking shelters;
- (d) management offices and facilities;
- (e) environmental education facilities and programs; and
- (f) cleanup and restoration projects.

The Legislature notes in subsection (5) that the need for these facilities and programs has exceeded the ability of the state to provide funding in a timely manner with available moneys. As a result, the Legislature finds it to be in the public interest to provide incentives for partnerships with private entities whose intent is the production of additional revenues to help enhance the use and potential of state property and environmental programs and projects funded by the department.

Section 20.2551(5)(b), F.S., also notes that the Legislature may annually appropriate funds, to be used as matching funds in conjunction with private donations, for capital improvement facilities development on state lands or the enhancement of department sponsored environmental programs or projects of local interest to citizen support organizations formed under s. 20.2551, F.S. Citizen support organizations are specifically authorized to acquire private donations pursuant to the section, and matching state funds for approved projects or programs may be provided.

#### **Audits of Direct-Support Organizations and Citizen Support Organizations**

Section 20.2551(3), F.S., requires that each citizen support organization provide for an annual financial audit in accordance with s. 215.981, F.S. Section 215.981(1), F.S., establishes financial audit requirements for CSOs, as well as DSOs. That section states:

Each direct-support organization and each citizen support organization, created or authorized pursuant to law, and created, approved, or administered by a state agency, other than a university, district board of trustees of a community college, or district school board,<sup>7</sup> shall provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General pursuant to s. 11.45(8) and the state agency that created,

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<sup>7</sup> The majority of DSOs fall within the exception provided in s. 215.981(1), F.S. There are, however, separate sections of statute that cover the DSOs for universities, community colleges, and school districts. *See*, ss. 1004.28(5), 1004.70(6), and 1001.453(4), F.S.

approved, or administers the direct-support organization or citizen support organization. The audit report shall be submitted within 9 months after the end of the fiscal year to the Auditor General and to the state agency responsible for creation, administration, or approval of the direct-support organization or citizen support organization. Such state agency, the Auditor General, and the Office of Program Policy Analysis and Government Accountability shall have the authority to require and receive from the organization or from the independent auditor any records relative to the operation of the organization.

The Office of the Auditor General has established rules for auditing direct-service organizations.<sup>8</sup> This rule chapter is supplemental to audit requirements mandated by other governmental entities that have authority over direct-support organizations. The rule is based on the standards for Financial Statements of Not-For-Profit Organizations established by the Financial Accounting Standards Board. If the auditor determines that the organization is a governmental entity, it is required to include a report on financial statements presented in accordance with reporting standards established by the Governmental Accounting Standards Board. Rule 10.710, *Rules of the Auditor General*, states in relevant part:

... each direct-support organization and citizen support organization, *except as provided in Section 215.981(2), Florida Statutes*, must provide for an annual financial audit of its accounts and records to 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 direct-support or citizen-support organization. It is the intent of this rule to supplement audit requirements mandated by other governmental entities that have authority over direct-support organizations and citizen-support organizations [*emphasis added*].

In the past, due to the expense of a typical audit, only CSOs and DSOs having annual expenditures of \$100,000 or more were required to have an independent audit. By the enactment of s. 22 of ch. 2001-266, L.O.F., however, the Legislature deleted the exemption for DSOs and CSOs having annual expenditures of less than \$100,000.<sup>9</sup> Section 215.981(2), F.S., provides a one-year audit exemption for the 2002-2003 fiscal year for citizen support organizations for the Department of Environmental Protection that are not for profit and that have annual expenditures of less than \$100,000. The exemption expires July 1, 2003.

The DEP reports that it currently has 86<sup>10</sup> CSOs supporting its operations. In the last fiscal year, two had expenditures of more than \$100,000; one had expenditures of more than \$300,000. The DEP also reports that, for some CSOs, the cost of the required audit may exceed annual revenues. The Joint Legislative Auditing Committee estimates that a typical CSO audit would cost \$1,500-\$5,000.

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<sup>8</sup> Chapter 10.700, *Rules of the Auditor General*.

<sup>9</sup> The deleted provision was included in SB 822, an omnibus bill primarily relating to auditing matters. The bill consolidated a number of provisions of law establishing CSO and direct support organization audit requirements into four provisions, i.e., ss. 215.981, 237.40(4), 240.299(5), and 240.331(6), F.S. In these provisions, these organizations were not exempted from audit requirements. Of these sections, only s. 215.981, F.S., survives today as chapters 237 and 240, F.S., have been repealed and the audit provisions for support organizations have been transferred to chapters 1001 and 1004, F.S.

<sup>10</sup> According to DEP staff, there are 79 state park CSOs, 6 in the CAMA program, and 1 in the OGT program.

**Florida Single Audit Act**

Section 215.97, F.S., contains the Florida Single Audit Act. The purpose of the act is to:

- (a) Establish uniform state audit requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects.
- (b) Promote sound financial management, including effective internal controls, with respect to state financial assistance administered by nonstate entities.
- (c) Promote audit economy and efficiency by relying to the extent possible on already required audits of federal financial assistance provided to nonstate entities.
- (d) Provide for identification of state financial assistance transactions in the appropriations act, state accounting records, and recipient organization records.
- (e) Promote improved coordination and cooperation with and between affected state agencies providing state financial assistance and nonstate entities receiving state assistance.
- (f) Ensure, to the maximum extent possible, that state agencies monitor, use, and followup on audits of state financial assistance provided to nonstate entities.

Section 215.97(7)(a), F.S., requires each recipient or subrecipient of state financial assistance to comply with the following:

Each nonstate entity<sup>11</sup> that receives state financial assistance<sup>12</sup> and meets audit threshold requirements,<sup>13</sup> in any fiscal year of the nonstate entity, as stated in the rules of the Auditor General, shall have a state single audit conducted for such fiscal year in accordance with the requirements of this act and with additional requirements established in rules of the Executive Office of the Governor, rules of the Comptroller, and rules of the Auditor General. If only one state project is involved in a nonstate entity's fiscal year, the nonstate entity may elect to have only a state project-specific audit of the state project for the fiscal year.

Section 215.97(2)(a), F.S., establishes an audit threshold amount under the Single Audit Act. Paragraph (a) states:

. . . Each nonstate entity that expends a total amount of state financial assistance equal to or in excess of \$300,000 in any fiscal year of such nonstate entity shall be required to have a state single audit for such fiscal year in accordance with the requirements of this section. Every 2 years the Auditor General, after consulting with the Executive Office of the Governor, the Comptroller, and all state agencies that provide state financial assistance to nonstate entities, shall review the amount for requiring audits under this section and may adjust such dollar amount consistent with the purpose of this section.

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<sup>11</sup> Section 215.97(2)(l), F.S., defines the term "nonstate entity" to mean a local governmental entity, nonprofit organization, or for-profit organization that receives state resources.

<sup>12</sup> Section 215.97(2)(p), F.S., defines the term "state financial assistance" to mean financial assistance from state resources, not including federal financial assistance and state matching, provided to nonstate entities to carry out a state project . . . It includes state financial assistance provided directly by state awarding agencies or indirectly by recipients of state awards or subrecipients. . . .

<sup>13</sup> Section 215.97(2)(a), F.S., establishes an audit threshold.

The Single Audit Act typically does not apply to DSOs or CSOs because they are created to *raise funds* for public purposes, and most usually do not receive government funds, though they may receive office or administrative support. It should be noted, however, that under s. 20.2551(5), F.S., as discussed *supra*, state matching funds may be provided. Given the amount of the matching funds, this could trigger the act.

### III. Effect of Proposed Changes:

The committee substitute amends the audit requirements established in s. 215.981, F.S., for direct-support organizations (DSOs) and citizen support organizations (CSOs). Specifically, the bill establishes an annual expenditure threshold of more than \$100,000 for non-educational DSOs and CSOs, outside the jurisdiction of the Department of Environmental Protection, prior to requiring an annual financial audit of its accounts and records by an independent certified public accountant.

For those direct-support organizations (DSOs) and citizen-support (CSOs) under jurisdiction of the Department of Environmental Protection, an annual expenditure threshold of \$300,000 is established before an independent audit is required. DSOs and CSOs with annual expenditures less than \$300,000 shall be reviewed by accounting and financial management guidelines established by the Department.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Economic Impact and Fiscal Note:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

DSOs and CSOs supporting the state park system that do not have annual expenditures of \$300,000 or more would not incur annual audit expenses estimated at \$1,500-\$5,000. This could be a significant cost savings, particularly for entities that do not have high monetary receipts .

**C. Government Sector Impact:**

Setting an expenditure threshold of more than \$100,000 for non-educational DSOs and CSOs as an audit requirement trigger will reduce the number of audits filed with the Auditor General and various state agencies as current law does not contain a threshold amount.

The DEP reports that it currently has 86 CSOs supporting its operations. In the last fiscal year, two had expenditures of more than \$100,000; one had expenditures of more than \$300,000. The DEP also reports that, for some CSOs, the cost of the required audit may exceed annual revenues. The Joint Legislative Auditing Committee estimates that a typical CSO audit would cost \$1,500-\$5,000.

The costs of conducting the required financial reviews by the Department of Environmental Protection are expected to be done within existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

According to staff of the Auditor General, the \$300,000 expenditure threshold provided in the Single Audit Act captures about 95 percent of the nonstate entities that receive state resources. Staff of the Auditor General reports that a \$300,000 expenditure threshold for CSO and DSO audits would capture about 1 percent of entities subject to it.

Sections 1004.28(5), 1004.70(6) and 1001.453(4), F.S., establish requirements for university, community college and school system support organizations. These sections of law do not contain a minimum expenditure threshold amount of more than \$100,000. Establishing an expenditure threshold of more than \$100,000 under s. 215.981, F.S., without providing a similar expenditure for university, community college and school system support organizations creates a disparity between non-educational DSOs and CSOs and educational DSOs and CSOs for audit requirements.

**VIII. Amendments:**

None.