

Committee on Healthy Seniors

**Tuesday, March 11, 2008
8:00 AM - 9:30 AM
24 HOB**

**Marco Rubio
Speaker**

**Hugh Gibson
Chair**



**House of Representatives
Committee on Healthy Seniors**



A G E N D A

**March 11, 2008
8:00 AM – 9:30 AM
24 HOB**

- I. Opening Remarks by Chair Gibson**
- II. Consideration of the following bills:**
 - HB 861 Department of Veterans' Affairs by Rep. Reagan**
 - HB 863 Public Records/Direct-Support Organization Department of Veterans' Affairs by Rep. Reagan**
- III. Workshop on the following bill:**
 - HB 1401 Adult Protection and Care by Rep. H. Gibson**
- IV. Closing Remarks by Chair Gibson**
- V. Adjournment**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 861 Department of Veterans' Affairs
SPONSOR(S): Reagan and others
TIED BILLS: HB 863 **IDEN./SIM. BILLS:** SB 1462

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Healthy Seniors</u>		 DePalma/Massengale	 Ciccone
2) <u>Healthcare Council</u>			
3) <u>Policy & Budget Council</u>			
4) _____			
5) _____			

SUMMARY ANALYSIS

House Bill 861 directs the Florida Department of Veterans' Affairs ("the department") to authorize the establishment of direct support-organizations (DSOs) for the purpose of providing assistance, funding, and support to the department. The bill provides for governance of the DSO by a board of directors, and specifies board composition and term limits. The bill additionally requires that a DSO shall operate under a written contract with the department, and provides contract requirements. The bill authorizes the department to permit use of departmental property, facilities, and personal services by the DSO under certain circumstances. Finally, the bill restricts transactions or agreements between the DSO it authorizes and another DSO absent approval by the department's executive director, requires the DSO to submit certain federal tax documents to the department, and provides for an annual financial audit of the DSO in accordance with s. 215.981, F.S.

The bill redirects twenty percent of the funds generated from the sale of the "Florida Salutes Veterans" specialty license plate – presently deposited in the State Homes for Veterans Trust Fund and administered by the department – toward the DSO for the sole purpose of providing direct or indirect benefit to the department.

The bill also repeals the Florida Commission on Veterans' Affairs (FCVA), an unfunded entity assigned to the department for purposes of conducting a biennial survey of possible contributions that veterans or veterans' organizations could make to the state. The bill deletes statutory cross-references to the FCVA, provides that the Department of Management Services shall consult with the department in designating and approving the Florida Medal of Honor Wall, and specifies that three members of the board of directors of the DSO established by this bill shall sit on the committee responsible for approving contracts for the installations of monuments and memorials honoring the state's military veterans at highway rest areas.

The bill has a negative fiscal impact on the State Homes for Veterans Trust Fund of approximately \$80,226.

The bill provides an effective date of July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill repeals the Florida Commission on Veterans' Affairs, an unfunded entity assigned to the Department of Veterans' Affairs, and reassigns certain responsibilities and duties of the commission to the department and members of the direct-support organization established by this legislation.

Empower Families – To the extent that the direct-support organization established by this bill is successful in generating contributions for the direct or indirect benefit of the Department of Veterans' Affairs, the department would potentially be better-equipped to meet the needs of the growing number of younger veterans who have served or are serving in the Global War on Terror, and who claim Florida as their home of record.

B. EFFECT OF PROPOSED CHANGES:

Background

Direct-Support Organizations

While no general statutory definition for a direct-support organization (DSO) exists in Florida 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 provide assistance to a governmental entity. Generally, a DSO is created to give a governmental entity the flexibility to seek an additional funding source, and to enhance the mission of the departments or political subdivisions they support.

Each DSO tends to be specifically authorized or created in statute. Oftentimes, the authorizing statute establishes requirements for the organization's articles of incorporation – as well as other oversight requirements – and membership and appointment procedures for the DSO's board of directors are provided.

Some more familiar state DSOs are the Florida National Guard Foundation and the Florida Juvenile Justice Foundation. Various other state agencies and political subdivisions are statutorily-empowered to authorize DSOs, including the Statewide Public Guardianship Office;¹ the Statewide Guardian Ad Litem Office;² the Office of Tourism, Trade, and Economic Development;³ the Department of Military Affairs;⁴ the Department of Corrections;⁵ and the Department of Education.⁶

DSOs with annual expenditures in excess of \$100,000 that are administered by a state agency are statutorily-required to provide for an annual financial audit of accounts and records to be conducted by an independent certified public accountant. Such audit report is submitted by the DSO within 9 months

¹ S. 744.7082, F.S.

² S. 39.8298, F.S.

³ S. 288.1229, F.S.

⁴ S. 250.115, F.S.

⁵ S. 944.802, F.S.

⁶ S. 1001.24, F.S.

after the end of the fiscal year to the Auditor General and to the state agency responsible for its creation, administration, or approval.⁷

Florida Salutes Veterans License Plates

Pursuant to s. 320.08058, F.S., the Department of Veterans' Affairs ("the department") administers all proceeds from the sale of the "Florida Salutes Veterans" specialty license plates. Annual fees are deposited in the State Homes for Veterans Trust Fund in the State Treasury, for the sole use of constructing, operating, and maintaining domiciliary and nursing homes for veterans, as well as for the continuing promotion and marketing of the license plate.

In Fiscal Year 2006-07, the department collected \$401,130 in revenue from the sale of "Florida Salutes Veterans" specialty license plates.

The Florida Commission on Veterans' Affairs

The Florida Commission on Veterans' Affairs (FCVA, or "the commission") is composed of nine commissioners appointed by the Governor, subject to confirmation by the Senate. The commission is charged with conducting a biennial survey of possible contributions that veterans or state organizations of veterans and their auxiliaries could make to the state, and to report survey results to the department together with recommendations for encouraging such contributions. The commission also works with various veterans' organizations and their auxiliaries in the state, and functions as a liaison between these organizations and the department on matters pertaining to veterans.⁸

Although the commission serves as an advisory body to the department (which in turn is responsible for providing administrative staff support for the commission), the commission, in the performance of its duties, is not subject to the control, supervision, or direction of the department.

Presently, the commission also consults with the Department of Management Services in designating and approving plaques on the Florida Medal of Honor Wall at the State Capitol Building,⁹ and the chair of the commission appoints three commission members to sit on the committee responsible for approving contracts for the installations of monuments and memorials honoring the state's military veterans at highway rest areas.¹⁰

Effect of Proposed Changes

Establishment of a Direct-Support Organization

The bill provides that the Department of Veterans' Affairs shall authorize the establishment of direct-support organizations to provide assistance, funding, and support for the department. A DSO established pursuant to this newly-created statute shall be not-for-profit, incorporated under chapter 617, F.S., exempted from filing fees, and approved by the Department of State. Such DSO must also be:

- 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;
- make expenditures to or for the direct or indirect benefit of the department; and,

⁷ S. 215.981, F.S.; note that the Auditor General, the state agency administering the DSO, and the Office of Program Policy Analysis and Government Accountability are further provided with the authority to require and receive from the DSO or from the independent auditor any records relative to the operation of the organization.

⁸ S. 292.04, F.S.

⁹ S. 265.002, F.S.

¹⁰ S. 337.111(1), F.S.

- determined by the department to be operating in a manner consistent with the goals of the department and in the best interest of the state.

Board of Directors

The bill specifies that the DSO will be governed by a board of directors, consisting of no fewer than five members appointed by the department's executive director, and provides for the ability of veteran service organizations in the state to recommend nominees. Board members' term limits shall be for 3 years, except to the extent that staggering the initial terms of appointees is necessary, and members may be reappointed when their term expires.

The bill provides for the executive director of the department (or his or her designee) to be an ex officio member of the board of directors. Board members must also be residents of the state, and a majority of members must be both veterans¹¹ and "highly knowledgeable about the U.S. military, its service personnel, its veterans, and its missions." Finally, the bill authorizes the executive director of the department to remove any board member for cause, and to appoint a replacement for any vacancy that occurs.

Contract

The bill requires the DSO to operate under a written contract with the department, which must provide for:

- annual certification by the department that the DSO is complying with the terms of the contract and is doing so consistent with the goals and purposes of the department and in the best interest of the state;
- the reversion of moneys and property held by the DSO (to the department if the DSO is no longer approved to operate for the department, to the department if the DSO ceases to exist, or to the state if the department ceases to exist); and
- the disclosure of the material provisions of the contract, and the distinction between the department and DSO, to donors of gifts, contributions or bequests (including such disclosure on all promotional and fundraising publications).

Use of Department Property

The bill authorizes the department to permit use of department property, facilities, and personal services by the DSO, and further provides that the department may prescribe by contract any condition with which a DSO must comply to use such departmental property and services. However, the bill specifies that the department may not permit use of its property, facilities, or personal services by a DSO where such DSO does not provide equal opportunities to all persons regardless of race, color, national origin, gender, age, or religion.

Other Provisions Relating to the Establishment of DSO

The bill requires that the executive director of the department must approve any transaction or agreement between a DSO authorized by the bill and another DSO or entity. The bill also clarifies that the fiscal year of the DSO runs from July 1 of each year to June 30 of the following year, and further requires the DSO to submit to the department copies of its Internal Revenue Service Forms 1023 and 990. Finally, the bill provides that the DSO shall provide for an annual financial audit in accordance with s. 215.981, F.S.

¹¹ Per s. 1.01(14), F.S., a "veteran" is an individual who "served in the active military, naval, or air service and who was discharged or released therefrom under honorable conditions only, or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans' Affairs on individuals discharged or released with other than honorable discharges."

Redirection of Specialty License Plate Revenue

The bill redistributes twenty percent of the annual funds collected through sale of the "Florida Salutes Veterans" specialty license plate to the DSO authorized in the bill for the sole purpose of providing direct or indirect benefit to the department. This redistribution reduces the amount of plate proceeds deposited into the State Homes for Veterans Trust Fund to eighty percent.

Repeal of Florida Commission on Veterans' Affairs

The bill repeals s. 292.04, F.S., relating to the creation of a Florida Commission on Veterans' Affairs, and makes conforming changes to other places in Florida law where the commission was referenced by transferring certain duties and responsibilities of the commission to the department and members of the newly-appointed DSO.

The bill provides that the Department of Management Services shall consult with the department in designating and approving the Florida Medal of Honor Wall at the State Capitol, and specifies that three members of the board of directors of the DSO established by this bill shall be appointed by the executive director of the department to sit on the committee responsible for approving contracts for the installations of monuments and memorials honoring the state's military veterans at highway rest areas. The bill adds that terms of appointed committee members shall run concurrently with the members' terms on the board of directors of the DSO.

The bill provides an effective date of July 1, 2008.

C. SECTION DIRECTORY:

Section 1. Creates s. 292.055, F.S.; authorizing the Department of Veterans' Affairs to establish direct support organizations for the purpose of providing support to the department; providing definitions; providing for governance of the direct-support organization by a board of directors; specifying board composition; detailing contract requirements between the department and the direct-support organization; allowing for use of departmental property, facilities, and personal services under certain circumstances; providing that the department's executive director must approve agreements between the direct-support organization being organized and other direct-support organizations; requiring the direct-support organization to submit certain federal tax documents to the department; providing for annual financial audits in accordance with s. 215.981, F.S.

Section 2. Amends s. 320.08058, F.S.; redirecting twenty percent of the annual funds collected through sale of the "Florida Salutes Veterans" license plate to the direct-support organization.

Section 3. Repeals s. 292.04, F.S.; relating to the creation of the Florida Commission on Veterans' Affairs.

Section 4. Amends s. 265.002, F.S.; deleting references to the Florida Commission on Veterans' Affairs; providing that the Department of Management Services shall consult with the department in designating an appropriate area of the Capitol Building for a Florida Medal of Honor Wall; providing for departmental approval of plaques on the Medal of Honor Wall.

Section 5. Amends s. 337.111, F.S.; deleting references to the Florida Commission on Veterans' Affairs; providing for membership of three members of the board of directors of the direct-support organization established under s. 292.055, F.S. on the committee responsible for approving contracts for the installations of monuments and memorials honoring the state's military veterans at highway rest areas; specifying term limits for appointed members.

Section 6. Provides that the act is effective July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments" below.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments" below.

D. FISCAL COMMENTS:

The bill requires no direct appropriation from the annual General Appropriations Act. However, a provision amending s. 320.08058, F.S., and redirecting twenty percent of the funds generated from the sale of the "Florida Salutes Veterans" license plates to the direct-support organization would shift funds normally allotted for the State Veterans' Nursing Home Trust Fund.

According to the Department of Highway Safety and Motor Vehicles, the "Florida Salutes Veterans" specialty plate generated \$401,130 in Fiscal Year 2006-07. Twenty percent of this amount is \$80,226.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This legislation does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 32-34 of the bill indicate that “[t]he Department of Veterans’ Affairs shall authorize the establishment of direct-support *organizations* to provide ...” (emphasis added). At lines 190-191, and at other points in the legislation, the bill makes reference to “the board of directors of *the* direct support organization established under s. 292.055” (emphasis added). It remains unclear if the bill is attempting to authorize the establishment of a single DSO, or rather authorizing multiple DSOs. To the extent that the bill also contains a redistribution of twenty percent of the funds generated from the sale of the “Florida Salutes Veterans” specialty license plates, creation of multiple DSOs by the department could greatly effect the negative fiscal impact on the State Veterans’ Nursing Home Trust Fund referenced above.

D. STATEMENT OF THE SPONSOR

None provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. HB 861

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Healthy Seniors

2 Representative(s) Reagan offered the following:

3
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:
6 Section 1. Section 292.055, Florida Statutes, is created to
7 read:

8 292.055 Direct-support organization.--

9 (1) DIRECT-SUPPORT ORGANIZATION; POPULAR NAME
10 ESTABLISHMENT.--This act shall be known as the "The Sergeant
11 First Class Paul R. Smith Memorial Act". The Department of
12 Veterans' Affairs shall authorize the establishment of a direct-
13 support organization to provide assistance, funding, and support
14 for the department in carrying out its mission. The provisions
15 of this section shall govern the creation, use, powers, and
16 duties of a direct-support organization.

17 (2) DEFINITIONS.--As used in this section, the term:

18 (a) "Department" means the Department of Veterans'
19 Affairs.

20 (b) "Direct-support organization" means an organization
21 that is:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

22 1. A Florida corporation not for profit, incorporated
23 under chapter 617, exempted from filing fees, and approved by
24 the Department of State.

25 2. Organized and operated exclusively to obtain funds;
26 request and receive grants, gifts, and bequests of moneys;
27 acquire, receive, hold, invest, and administer in its own name
28 securities, funds, or property; and make expenditures to or for
29 the direct or indirect benefit of the department, the veterans
30 of Florida, and congressionally chartered veteran service
31 organization with subdivisions that are incorporated in the
32 state of Florida.

33 3. Determined by the department to be operating in a
34 manner consistent with the goals of the department and in the
35 best interest of the state.

36 (c) "Personal services" includes full-time or part-time
37 personnel.

38 (3) BOARD OF DIRECTORS.--The direct-support organization
39 shall be governed by a board of directors. The board of
40 directors shall consist of no fewer than five members appointed
41 by the executive director of the department. Veteran service
42 organizations in Florida may recommend nominees to the executive
43 director of the department. The term of office of the board
44 members shall be 3 years, except that the terms of the initial
45 appointees shall be for 1 year, 2 years, or 3 years in order to
46 achieve staggering of terms. A member may be reappointed when
47 his or her term expires. The executive director of the
48 department or his or her designee shall serve as an ex officio
49 member of the board of directors. Members must be current
50 residents of the state. A majority of the members must be
51 veterans, as defined in s. 1.01(14), and highly knowledgeable
52 about the United States military, its service personnel, its

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53 veterans, and its missions. The executive director of the
54 department may remove any member of the board for cause, with
55 the approval of a majority of the members of the board of
56 directors. The executive director of the department shall
57 appoint a replacement for any vacancy that occurs.

58 (4) CONTRACT.—The direct-support organization shall
59 operate under a written contract with the department. The
60 written contract must provide for:

61 (a) Certification by the department that the direct-
62 support organization is complying with the terms of the contract
63 and is doing so consistent with the goals and purposes of the
64 department and in the best interests of the state. This
65 certification must be made annually and reported in the official
66 minutes of a meeting of the direct-support organization.

67 (b) The reversion of moneys and property held by the
68 direct-support organization:

69 1. To the department if the direct-support organization is
70 no longer approved to operate for the department;

71 2. To the department if the direct-support organization
72 ceases to exist; or

73 3. To the state if the department ceases to exist.

74 (c) The disclosure of the material provisions of the
75 contract, and the distinction between the department and the
76 direct-support organization, to donors of gifts, contributions,
77 or bequests, including such disclosure on all promotional and
78 fundraising publications.

79 (5) USE OF PROPERTY.--

80 (a) The department may permit the use of property,
81 facilities, and personal services of the department by the
82 direct-support organization, subject to the provisions of this
83 section.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

84 (b) The department may prescribe by contract any condition
85 with which the direct-support organization organized under this
86 section must comply in order to use property, facilities, or
87 personal services of the department.

88 (c) The department may not permit the use of its property,
89 facilities, or personal services by the direct-support
90 organization organized under this section if such direct support
91 organization does not provide equal employment opportunities to
92 all persons regardless of race, color, national origin, gender,
93 age, or religion.

94 (6) ACTIVITIES; RESTRICTIONS.--Any transaction or
95 agreement between the direct-support organization organized
96 pursuant to this section and another direct-support organization
97 or other entity must be approved by the executive director of
98 the department.

99 (7) ANNUAL BUDGETS AND REPORTS.--

100 (a) The fiscal year of the direct-support organization
101 shall begin on July 1 of each year and end on June 30 of the
102 following year.

103 (b) The direct-support organization shall submit to the
104 department its federal Internal Revenue Service Application for
105 Recognition of Exemption form (Form 1023) and its federal
106 Internal Revenue Service Return of Organization Exempt from
107 Income Tax form (Form 990).

108 (8) ANNUAL AUDIT.--The direct-support organization shall
109 provide for an annual financial audit in accordance with s.
110 215.981.

111 Section 2. Subsection (4) of section 320.08058, Florida
112 Statutes, is amended to read:

113 320.08058 Specialty license plates.--

114 (4) FLORIDA SALUTES VETERANS LICENSE PLATES.--

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

115 (a) The department shall develop a Florida Salutes
116 Veterans license plate. The words "Florida Salutes Veterans" and
117 the flag of the United States of America must appear on the
118 plate.

119 (b) The Florida Salutes Veterans license plate annual use
120 fee shall be distributed as follows:

121 1. Twenty-percent shall be distributed to a direct-support
122 organization created under s. 292.055 for a period not to exceed
123 twenty four months after its date of incorporation.

124 2. Any remaining fees must be deposited in the State Homes
125 for Veterans Trust Fund, which is created in the State Treasury.
126 All such moneys are to be administered by the Department of
127 Veterans' Affairs and must be used solely for the purpose of
128 constructing, operating, and maintaining domiciliary and nursing
129 homes for veterans and for continuing promotion and marketing of
130 the license plate, subject to the requirements of chapter 216.

131 Section 3. Section 292.04, Florida Statutes, is repealed.

132 Section 4. Subsections (2) and (3) of section 265.002,
133 Florida Statutes, are amended to read:

134 265.002 Legislative intent; Florida Medal of Honor Wall;
135 duties of the Department of Veterans' Affairs.--

136 (2) (a) There is hereby established the Florida Medal of
137 Honor Wall. The Department of Management Services shall, in
138 consultation with the Department of Veterans' Affairs ~~Florida~~
139 ~~Commission on Veterans' Affairs~~, designate an appropriate area
140 on the Plaza Level of the Capitol Building in Tallahassee for
141 this purpose. The department shall also subsequently consult
142 with the Department of Veterans' Affairs ~~Commission on Veterans'~~
143 ~~Affairs~~ regarding the design and theme of such area.

144 (b) Each recipient who is accredited, or associated by
145 birth, to the State of Florida and has been awarded the Medal of

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Amendment No. 1 (for drafter's use only)

146 Honor shall have a plaque or similar designation approved by the
147 Department of Veterans' Affairs ~~Florida Commission on Veterans'~~
148 ~~Affairs~~ placed on the Medal of Honor Wall, which designation
149 shall provide information regarding the Floridian's particular
150 act of heroism as well as other information relating to the
151 nature of the act.

152 (3) Verification of residency, dates of the receipt of the
153 award, and other specific information pertaining to each
154 recipient shall be the responsibility of the ~~Florida~~ Department
155 of Veterans' Affairs, which shall certify eligibility for
156 inclusion of individuals to be added to the Florida Medal of
157 Honor Wall.

158 Section 5. Subsection (1) of section 337.111, Florida
159 Statutes, is amended to read:

160 337.111 Contracting for monuments and memorials to
161 military veterans at rest areas.--The Department of
162 Transportation is authorized to enter into contract with any
163 not-for-profit group or organization that has been operating for
164 not less than 2 years for the installation of monuments and
165 memorials honoring Florida's military veterans at highway rest
166 areas around the state pursuant to the provisions of this
167 section.

168 (1) Proposals for contracts must be approved by a
169 committee composed of the Secretary of Transportation or the
170 secretary's designee, the executive director of the Department
171 of Veterans' Affairs or the executive director's designee, and
172 three members of the board of directors of the direct-support
173 organization established under s. 292.055 ~~Florida Commission on~~
174 ~~Veterans' Affairs~~ appointed by the executive director ~~chair~~ of
175 the Department of Veterans' Affairs ~~commission~~. The terms of the
176 appointed members shall ~~be appointed for terms~~ not to exceed 2

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177 years and shall run concurrently with the members' terms on the
178 board of directors of the direct-support organization.

179 Appointed members and may be reappointed to the committee.

180 ~~Appointed members' terms expire on January 31 of each even-~~
181 ~~numbered year.~~

182 Section 6. This act shall take effect July 1, 2008.

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184

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T I T L E A M E N D M E N T

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Remove the entire title and insert:

187

A bill to be entitled

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An act relating to the Department of Veterans' Affairs;

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creating s. 292.055, F.S.; providing for the establishment

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of a direct-support organization for the Department of

191

Veterans' Affairs; naming the program the "Sergeant First

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Class Paul R. Smith Memorial Act"; providing definitions;

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providing for governance of the direct-support

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organization by a board of directors; providing for

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organization and membership of the board; requiring the

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direct-support organization to operate under a contract

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with the Department of Veterans' Affairs; providing

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contract requirements; providing conditions and

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requirements with respect to the use of property,

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facilities, and personal services of the department by the

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direct-support organization; providing for annual budgets,

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audits, and reports; amending s. 320.08058, F.S.; revising

203

the distribution of the annual use fee from the Florida

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Salutes Veterans license plate; specifying use of funds;

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repealing s. 292.04, F.S.; eliminating the Florida

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Commission on Veterans' Affairs; amending s. 265.002,

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F.S.; revising provisions relating to the Florida Medal of

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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208 Honor Wall, to conform; amending s. 337.111, F.S.;

209 revising the composition and terms of committee members

210 whose duty it is to approve contract proposals for

211 specified monuments and memorials to military veterans, to

212 conform; providing an effective date.

213

1 A bill to be entitled
 2 An act relating to the Department of Veterans' Affairs;
 3 creating s. 292.055, F.S.; providing for the establishment
 4 of direct-support organizations for the Department of
 5 Veterans' Affairs; providing definitions; providing for
 6 governance of the direct-support organization by a board
 7 of directors; providing for organization and membership of
 8 the board; requiring the direct-support organization to
 9 operate under a contract with the Department of Veterans'
 10 Affairs; providing contract requirements; providing
 11 conditions and requirements with respect to the use of
 12 property, facilities, and personal services of the
 13 department by the direct-support organization; providing
 14 for annual budgets, audits, and reports; amending s.
 15 320.08058, F.S.; revising the distribution of the annual
 16 use fee from the Florida Salutes Veterans license plate;
 17 specifying use of funds; repealing s. 292.04, F.S.;
 18 eliminating the Florida Commission on Veterans' Affairs;
 19 amending s. 265.002, F.S.; revising provisions relating to
 20 the Florida Medal of Honor Wall, to conform; amending s.
 21 337.111, F.S.; revising the composition and terms of
 22 committee members whose duty it is to approve contract
 23 proposals for specified monuments and memorials to
 24 military veterans, to conform; providing an effective
 25 date.

26
 27 Be It Enacted by the Legislature of the State of Florida:
 28

29 Section 1. Section 292.055, Florida Statutes, is created
 30 to read:

31 292.055 Direct-support organization.--

32 (1) DIRECT-SUPPORT ORGANIZATION; ESTABLISHMENT.--The
 33 Department of Veterans' Affairs shall authorize the
 34 establishment of direct-support organizations to provide
 35 assistance, funding, and support for the department in carrying
 36 out its mission. The provisions of this section shall govern the
 37 creation, use, powers, and duties of the direct-support
 38 organization.

39 (2) DEFINITIONS.--As used in this section, the term:

40 (a) "Department" means the Department of Veterans'
 41 Affairs.

42 (b) "Direct-support organization" means an organization
 43 that is:

44 1. A Florida corporation not for profit, incorporated
 45 under chapter 617, exempted from filing fees, and approved by
 46 the Department of State.

47 2. Organized and operated exclusively to obtain funds;
 48 request and receive grants, gifts, and bequests of moneys;
 49 acquire, receive, hold, invest, and administer in its own name
 50 securities, funds, or property; and make expenditures to or for
 51 the direct or indirect benefit of the department.

52 3. Determined by the department to be operating in a
 53 manner consistent with the goals of the department and in the
 54 best interest of the state.

55 (c) "Personal services" includes full-time or part-time
 56 personnel.

57 (3) BOARD OF DIRECTORS.--The direct-support organization
 58 shall be governed by a board of directors. The board of
 59 directors shall consist of no fewer than five members appointed
 60 by the executive director of the department. Veteran service
 61 organizations in Florida may recommend nominees to the executive
 62 director of the department. The term of office of the board
 63 members shall be 3 years, except that the terms of the initial
 64 appointees shall be for 1 year, 2 years, or 3 years in order to
 65 achieve staggering of terms. A member may be reappointed when
 66 his or her term expires. The executive director of the
 67 department or his or her designee shall serve as an ex officio
 68 member of the board of directors. Members must be current
 69 residents of the state. A majority of the members must be
 70 veterans, as defined in s. 1.01(14), and highly knowledgeable
 71 about the United States military, its service personnel, its
 72 veterans, and its missions. The executive director of the
 73 department may remove any member of the board for cause. The
 74 executive director of the department shall appoint a replacement
 75 for any vacancy that occurs.

76 (4) CONTRACT.--A direct-support organization shall operate
 77 under a written contract with the department. The written
 78 contract must provide for:

79 (a) Certification by the department that the direct-
 80 support organization is complying with the terms of the contract
 81 and is doing so consistent with the goals and purposes of the
 82 department and in the best interests of the state. This
 83 certification must be made annually and reported in the official
 84 minutes of a meeting of the direct-support organization.

85 (b) The reversion of moneys and property held by the
 86 direct-support organization:

87 1. To the department if the direct-support organization is
 88 no longer approved to operate for the department;

89 2. To the department if the direct-support organization
 90 ceases to exist; or

91 3. To the state if the department ceases to exist.

92 (c) The disclosure of the material provisions of the
 93 contract, and the distinction between the department and the
 94 direct-support organization, to donors of gifts, contributions,
 95 or bequests, including such disclosure on all promotional and
 96 fundraising publications.

97 (5) USE OF PROPERTY.--

98 (a) The department may permit the use of property,
 99 facilities, and personal services of the department by the
 100 direct-support organization, subject to the provisions of this
 101 section.

102 (b) The department may prescribe by contract any condition
 103 with which a direct-support organization organized under this
 104 section must comply in order to use property, facilities, or
 105 personal services of the department.

106 (c) The department may not permit the use of its property,
 107 facilities, or personal services by any direct-support
 108 organization organized under this section which does not provide
 109 equal employment opportunities to all persons regardless of
 110 race, color, national origin, gender, age, or religion.

111 (6) ACTIVITIES; RESTRICTIONS.--Any transaction or
 112 agreement between the direct-support organization organized

113 | pursuant to this section and another direct-support organization
 114 | or other entity must be approved by the executive director of
 115 | the department.

116 | (7) ANNUAL BUDGETS AND REPORTS.--

117 | (a) The fiscal year of the direct-support organization
 118 | shall begin on July 1 of each year and end on June 30 of the
 119 | following year.

120 | (b) The direct-support organization shall submit to the
 121 | department its federal Internal Revenue Service Application for
 122 | Recognition of Exemption form (Form 1023) and its federal
 123 | Internal Revenue Service Return of Organization Exempt from
 124 | Income Tax form (Form 990).

125 | (8) ANNUAL AUDIT.--The direct-support organization shall
 126 | provide for an annual financial audit in accordance with s.
 127 | 215.981.

128 | Section 2. Subsection (4) of section 320.08058, Florida
 129 | Statutes, is amended to read:

130 | 320.08058 Specialty license plates.--

131 | (4) FLORIDA SALUTES VETERANS LICENSE PLATES.--

132 | (a) The department shall develop a Florida Salutes
 133 | Veterans license plate. The words "Florida Salutes Veterans" and
 134 | the flag of the United States of America must appear on the
 135 | plate.

136 | (b) The Florida Salutes Veterans license plate annual use
 137 | fee shall be distributed as follows:

138 | 1. Twenty-percent shall be distributed to a direct-support
 139 | organization created under s. 292.055. Such funds shall be used
 140 | for the sole purpose of providing direct or indirect benefit to

141 | the Department of Veterans' Affairs.

142 | 2. Any remaining fees must be deposited in the State Homes
 143 | for Veterans Trust Fund, which is created in the State Treasury.
 144 | All such moneys are to be administered by the Department of
 145 | Veterans' Affairs and must be used solely for the purpose of
 146 | constructing, operating, and maintaining domiciliary and nursing
 147 | homes for veterans and for continuing promotion and marketing of
 148 | the license plate, subject to the requirements of chapter 216.

149 | Section 3. Section 292.04, Florida Statutes, is repealed.

150 | Section 4. Subsections (2) and (3) of section 265.002,
 151 | Florida Statutes, are amended to read:

152 | 265.002 Legislative intent; Florida Medal of Honor Wall;
 153 | duties of the Department of Veterans' Affairs.--

154 | (2) (a) There is hereby established the Florida Medal of
 155 | Honor Wall. The Department of Management Services shall, in
 156 | consultation with the Department of Veterans' Affairs ~~Florida~~
 157 | ~~Commission on Veterans' Affairs~~, designate an appropriate area
 158 | on the Plaza Level of the Capitol Building in Tallahassee for
 159 | this purpose. The department shall also subsequently consult
 160 | with the Department of Veterans' Affairs ~~Commission on Veterans'~~
 161 | ~~Affairs~~ regarding the design and theme of such area.

162 | (b) Each recipient who is accredited, or associated by
 163 | birth, to the State of Florida and has been awarded the Medal of
 164 | Honor shall have a plaque or similar designation approved by the
 165 | Department of Veterans' Affairs ~~Florida Commission on Veterans'~~
 166 | ~~Affairs~~ placed on the Medal of Honor Wall, which designation
 167 | shall provide information regarding the Floridian's particular

168 act of heroism as well as other information relating to the
 169 nature of the act.

170 (3) Verification of residency, dates of the receipt of the
 171 award, and other specific information pertaining to each
 172 recipient shall be the responsibility of the ~~Florida~~ Department
 173 of Veterans' Affairs, which shall certify eligibility for
 174 inclusion of individuals to be added to the Florida Medal of
 175 Honor Wall.

176 Section 5. Subsection (1) of section 337.111, Florida
 177 Statutes, is amended to read:

178 337.111 Contracting for monuments and memorials to
 179 military veterans at rest areas.--The Department of
 180 Transportation is authorized to enter into contract with any
 181 not-for-profit group or organization that has been operating for
 182 not less than 2 years for the installation of monuments and
 183 memorials honoring Florida's military veterans at highway rest
 184 areas around the state pursuant to the provisions of this
 185 section.

186 (1) Proposals for contracts must be approved by a
 187 committee composed of the Secretary of Transportation or the
 188 secretary's designee, the executive director of the Department
 189 of Veterans' Affairs or the executive director's designee, and
 190 three members of the board of directors of the direct-support
 191 organization established under s. 292.055 ~~Florida Commission on~~
 192 ~~Veterans' Affairs~~ appointed by the executive director chair of
 193 the Department of Veterans' Affairs ~~commission~~. The terms of the
 194 appointed members shall ~~be appointed for terms~~ not to exceed 2
 195 years and shall run concurrently with the members' terms on the

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196 board of directors of the direct-support organization.
197 Appointed members ~~and~~ may be reappointed to the committee.
198 ~~Appointed members' terms expire on January 31 of each even-~~
199 ~~numbered year.~~


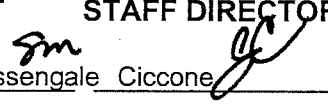
200 Section 6. This act shall take effect July 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 863
SPONSOR(S): Reagan
TIED BILLS: HB 861

Pub. Rec./Direct-Support Organization/DVA

IDEN./SIM. BILLS: SB 1464

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Healthy Seniors</u>		 DePalma/Massengale	 Ciccone
2) <u>Healthcare Council</u>			
3) <u>Policy & Budget Council</u>			
4) _____			
5) _____			

SUMMARY ANALYSIS

House Bill 863 is the public records exemption companion to HB 861, which directs the Florida Department of Veterans' Affairs to authorize the establishment of direct-support organizations for the purpose of providing assistance, funding, and support to the department. The bill makes confidential and exempt, from s. 119.07(1), F.S., and Article I, s. 24(a) of the Florida Constitution, the identity of a donor or prospective donor to the direct-support organization who desires to remain anonymous, as well as all identifying information of such donor or prospective donor. The bill further provides that such anonymity shall be maintained in the auditor's report authorized under 215.981, F.S., but that the Department of Veterans' Affairs and the Auditor General shall have access to all records of the direct-support organization upon request.

The bill specifies this exemption as subject to the Open Government and Sunset Review Act in accordance with s. 119.15, F.S., and provides that such exemption will stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity for the exemption.

The bill creates a new public records exemption and, as a result, is subject to Article I, s. 24(a) of the Florida Constitution, which requires that two-thirds of the members present and voting in each house shall pass the bill.

The bill provides an effective date that is contingent upon HB 861 taking effect and becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill decreases access to certain public records.

B. EFFECT OF PROPOSED CHANGES:

Background

HB 861

HB 861 directs the Florida Department of Veterans' Affairs ("the department") to authorize the establishment of direct support-organizations (DSOs) for the purpose of providing assistance, funding, and support to the department. The bill provides for governance of the DSO by a board of directors, and specifies board composition and term limits. The bill additionally requires that a DSO shall operate under a written contract with the department, and provides contract requirements. The bill authorizes the department to permit use of departmental property, facilities, and personal services by the DSO under certain circumstances. Finally, the bill restricts transactions or agreements between the DSO it authorizes and another DSO absent approval by the department's executive director, requires the DSO to submit certain federal tax documents to the department, and provides for an annual financial audit of the DSO in accordance with s. 215.981, F.S.

Veterans Returning from the Global War on Terror

According to the department, the number of members of the United States Armed Forces who have served or are presently serving in the Global War on Terror and who claim Florida as their home of record (a good indicator of where such individuals are likely to reside after leaving the service) as of December 2007 is 158,349. This figure is up from 143,469 in December 2006. It is the department's contention that this influx of younger veterans will require increased flexibility on the part of the department to meet their needs.

Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24 of the State Constitution provides that:

- (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

¹ S. 1390,1391, F.S., (Rev. 1892).

² Article I, s. 24 of the Florida Constitution.

In addition to the State Constitution, the Public Records Act,³ which predates the State Constitution, specifies conditions under which public access must be provided to records of an agency.⁴ Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean:

...all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁵

The Supreme Court of Florida has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

Only the Legislature is authorized to create exemptions to open government requirements.⁸ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁹ A bill enacting an exemption¹⁰ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹¹

There is a difference between records that the Legislature has made exempt from public inspection and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to persons or entities designated in the statute.¹² If a record is simply made exempt from disclosure requirements an agency is not prohibited from disclosing the record in all circumstances.¹³

The Open Government Sunset Review Act¹⁴ provides for the systematic review, through a 5-year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or

³ Ch. 119, F.S.

⁴ The word "agency" is defined in s. 119.011(2), F.S., to mean "...any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution.

⁵ S. 119.011(11), F.S.

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633,640 (Fla. 1980).

⁷ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁸ Article I, s. 24(c) of the Florida Constitution.

⁹ *Memorial Hospital-West Volusia v. News Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News Journal Corporation*, 724 So.2d 567 (Fla. 1999).

¹⁰ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹¹ Article I, s. 24(c) of the Florida Constitution.

¹² Attorney General Opinion 85-62

¹³ *Williams v. City of Minneola*, 575 So.2d 683,687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹⁴ S. 119.15, F.S.

the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria, and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- (1) allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- (2) protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- (3) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁵

The act also requires consideration of the following:

- (1) What specific records or meetings are affected by the exemption?
- (2) Whom does the exemption uniquely affect, as opposed to the general public?
- (3) What is the identifiable public purpose or goal of the exemption?
- (4) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- (5) Is the record or meeting protected by another exemption?
- (6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.¹⁶ The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(4)(e), F.S., makes explicit the fact that:

...notwithstanding s. 768.28, F.S., or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Under s. 119.10(1)(a), F.S., any public officer who violates any provision of the Public Records Act is guilty of a noncriminal infraction, punishable by a fine not to exceed \$500. Further, under paragraph (b) of that section, a public officer who knowingly violates the provisions of s. 119.07(1), F.S., relating to the right to inspect public records, commits a first degree misdemeanor penalty, and is subject to suspension and removal from office or impeachment. Additionally, any person who willfully and

¹⁵ *Id.*

¹⁶ *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

knowingly violates any provision of the chapter is guilty of a first degree misdemeanor, punishable by potential imprisonment not exceeding one year, and a fine not exceeding \$1,000.

Effect of Proposed Changes

The bill is the public records exemption companion to HB 861, which directs the Florida Department of Veterans' Affairs to authorize the establishment of direct-support organizations for the purpose of providing assistance, funding, and support to the department. The bill makes confidential and exempt, from s. 119.07(1), F.S., and Article I, s. 24(a) of the Florida Constitution, the identity of a donor or prospective donor to the direct-support organization who desires to remain anonymous, as well as all identifying information of such donor or prospective donor. The bill further provides that such anonymity shall be maintained in the auditor's report authorized under 215.981, F.S., but that the Department of Veterans' Affairs and the Auditor General shall have access to all records of the direct-support organization upon request.

The bill specifies this exemption as subject to the Open Government and Sunset Review Act in accordance with s. 119.15, F.S., and provides that such exemption will stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity for the exemption.

The bill creates a new public records exemption and, as a result, is subject to Article I, s. 24(a) of the Florida Constitution, which requires that two-thirds of the members present and voting in each house shall pass the bill.

C. SECTION DIRECTORY:

Section 1. Amends s. 292.055(6), F.S., as created by HB 861, 2008 Regular Session; creating a public records exemption.

Section 2. Provides a statement of public necessity for the exemption.

Section 3. Provides an effective date that is contingent upon HB 861 taking effect and becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

There may be minimal costs of complying with the confidentiality and exemption requirements; however, these costs are indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This legislation does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

None provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to public records; amending s. 292.055,
 3 F.S.; providing an exemption from public records
 4 requirements for the identity of a donor or prospective
 5 donor to a direct-support organization of the Department
 6 of Veterans' Affairs and all information identifying such
 7 donor or prospective donor; providing for specified access
 8 to records of the direct-support organization; providing
 9 for review and repeal of the exemption; providing a
 10 statement of public necessity; providing an effective
 11 date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Subsection (6) of section 292.055, Florida
 16 Statutes, as created by HB 861, 2008 Regular Session, is amended
 17 to read:

18 292.055 Direct-support organization.--

19 (6) ACTIVITIES; RESTRICTIONS; PUBLIC RECORDS EXEMPTION.--

20 (a) Any transaction or agreement between the direct-
 21 support organization organized pursuant to this section and
 22 another direct-support organization or other entity must be
 23 approved by the executive director of the department.

24 (b)1. The identity of a donor or prospective donor to the
 25 direct-support organization who desires to remain anonymous, and
 26 all information identifying such donor or prospective donor is
 27 confidential and exempt from the provisions of s. 119.07(1) and
 28 s. 24(a), Art. I of the State Constitution. Such anonymity shall

29 be maintained in the auditor's report. The department and the
 30 Auditor General shall have access to all records of the direct-
 31 support organization upon request.

32 2. This paragraph is subject to the Open Government Sunset
 33 Review Act in accordance with s. 119.15 and shall stand repealed
 34 on October 2, 2013, unless reviewed and saved from repeal
 35 through reenactment by the Legislature.

36 Section 2. It is the finding of the Legislature that it is
 37 a public necessity to protect the identity of donors and
 38 prospective donors to a direct-support organization authorized
 39 under s. 292.055, Florida Statutes, to assist the Department of
 40 Veterans' Affairs in carrying out its mission of advocating for,
 41 and providing benefits and services to, veterans of the United
 42 States Armed Forces. Protection of the identity of donors and
 43 prospective donors to the direct-support organization will
 44 enable the direct-support organization to effectively and
 45 efficiently administer the benefits and services it provides.
 46 Historically, the Department of Veterans' Affairs has focused on
 47 providing services to veterans who served in World War II,
 48 Korea, and Vietnam and whose needs have included assisted living
 49 facilities, long-term care, and cemeteries. As part of this
 50 traditional role, the department is also charged with the
 51 responsibility of operating and maintaining state veterans'
 52 nursing homes. As more such homes are built and the facilities
 53 age, the department's costs for operation and maintenance
 54 continue to increase. However, the mission of the Department of
 55 Veterans' Affairs has changed since troops have begun returning
 56 from service in the Global War on Terror. The past 2 years have

57 seen the influx of a younger group of returning servicemembers
 58 comprised of over 150,000 veterans of Operation Iraqi Freedom
 59 and Operation Enduring Freedom who list Florida as their home of
 60 record. These veterans and their families have needs that
 61 include, but are not limited to, assistance in obtaining
 62 employment, educational opportunities, and vocational
 63 rehabilitation. So while the department's commitment to older
 64 veterans continues, the department finds that it must diversify
 65 the services it offers to accommodate the expanding scope of the
 66 needs of all veterans. Consequently, the department must
 67 constantly seek new sources of revenue to support increased
 68 costs without relying solely upon the taxpayers and the general
 69 revenue of the state. The purpose of the exemption from public
 70 records requirements is to ensure that the request for anonymity
 71 of donors or prospective donors to the not-for-profit
 72 corporation is honored, thereby encouraging donations from
 73 individuals and entities that might otherwise decline to
 74 contribute. Without the exemption, potential donors may be
 75 reluctant or unwilling to contribute to the direct-support
 76 organization for fear of the harmful effects that may result
 77 from the release of sensitive financial information. Difficulty
 78 in soliciting donations would hamper the ability of the direct-
 79 support organization to carry out its activities and would
 80 hinder fulfillment of the goals of the department and the
 81 direct-support organization which can only be accomplished
 82 through obtaining necessary funding from both public-sector and
 83 private-sector sources.

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84 Section 3. This act shall take effect on the same date
85 that HB 861 or similar legislation takes effect, if such
86 legislation is adopted in the same legislative session or an
87 extension thereof and becomes law.

HB 1401 – Adult Protection and Care, by Representative H. Gibson

ALF Resident Discharge and Transfer Protection

Background: This summer, representatives from Florida's Long-Term Care Ombudsmen Program approached staff of the House Committee on Healthy Seniors and other House Members with a long-standing legislative proposal to extend those discharge and transfer protections enjoyed by residents of state nursing home facilities to residents of assisted living facilities. The Ombudsmen program reported that ALF resident complaints related to inappropriate discharges had nearly doubled in 2006 (114 total complaints) compared to previous years (61 complaints in 2004, and 62 in 2005). Additionally, there was a general concern that these figures might not entirely capture the magnitude of the problem, because it is possible that complaints related to questionable or inappropriate discharges are underreported. HB 1401, as filed, is largely patterned after similar resident discharge and transfer protection provisions contained in Part II of Chapter 400, F.S., related to state nursing homes.

The legislation contains three primary provisions:

1. Permissible Reasons for Resident Transfer or Discharge

- Provides that assisted living facilities licensed under Chapter 429, F.S., are required to permit facility residents to remain in the facility, and may not transfer/discharge a resident unless:
 - a) such transfer/discharge is necessary for the resident's welfare,
 - b) such transfer/discharge is appropriate because the resident's health has sufficiently improved,
 - c) the health or safety of other residents or facility employees would be endangered,
 - d) the resident has failed to provide payment for his or her stay, or
 - e) the facility ceases to operate.

2. Notice of Transfer or Discharge

- Requires a facility to provide 30 day advance notice to the resident prior to any proposed transfer/discharge, except where the transfer/discharge is necessary for either the resident's welfare or the health and safety of other residents or facility employees is endangered, whereupon a facility must provide notice "as soon as practicable" before the transfer/discharge.
- Instructs the Agency for Health Care Administration (AHCA) to develop a standard notice document, and specifies that such document must include a means for a resident to request the assistance of the local long-term care ombudsmen council to review the notice and receive assistance with initiating a fair hearing.
- Such notice must also detail the specific reason for discharge or transfer, the effective date of the transfer/discharge, the location to which the resident is being

discharged transferred/discharged, and a description of the resident's right to appeal.

- Provides that the notice of transfer/discharge must be transmitted to the local long-term care ombudsmen council within 5 business days of resident signature, and the council shall review transfers/discharges within 7 days after a resident requests such review.
- Specifies that notice of an emergency transfer/discharge must be by telephone or in person, and directs the ombudsmen council to complete a review of such emergency transfer/discharge, when requested, within 24 hours.
- Requires the notice of transfer/discharge to be signed by a facility administrator (or designee) when the transfer/discharge is initiated by the facility, and by the resident's attending physician when a notice indicates a medical reason for transfer/discharge.

3. Fair Hearing

- Provides that a resident is entitled to a fair hearing to challenge a facility's proposed transfer/discharge any time within 90 days of receipt of notice to transfer/discharge.
- Specifies that a resident request for a fair hearing within the initial 10 days of receipt of notice stays the proposed transfer/discharge pending a hearing decision.
- Permits a facility to transfer/discharge a resident after 30 days of receipt of notice, pending a final hearing decision, if a fair hearing is not requested within the first 10 days of receipt of notice.
- Provides that emergency transfer/discharge may be implemented as necessary during the period of time after notice is provided and before a hearing decision is rendered.
- Directs the Department of Children and Family Services' Office of Appeals Hearings to conduct fair hearings pursuant to resident transfer/discharge disputes, and specifies that appeals may be made to the district court of appeal in the appellate district in which the facility is located.
- Provides that, in the event the hearing decision is favorable to the resident, such resident must be readmitted to the facility's first available bed.

29 at the hearing; providing hearing requirements;
 30 authorizing the agency to adopt rules; amending ss. 429.07
 31 and 429.31, F.S.; conforming cross-references; providing
 32 an effective date.

33

34 Be It Enacted by the Legislature of the State of Florida:

35

36 Section 1. Paragraph (k) of subsection (1) of section
 37 429.28, Florida Statutes, is amended to read:

38 429.28 Resident bill of rights.--

39 (1) No resident of a facility shall be deprived of any
 40 civil or legal rights, benefits, or privileges guaranteed by
 41 law, the Constitution of the State of Florida, or the
 42 Constitution of the United States as a resident of a facility.
 43 Every resident of a facility shall have the right to:

44 (k) Be transferred or discharged only for the reasons
 45 specified under s. 429.285 and only after following procedures
 46 required by that section. A facility licensed under this part
 47 may not transfer or discharge a resident solely because the
 48 source of payment for care changes. Admission to a facility
 49 licensed under this part may not be conditioned upon a waiver of
 50 such right, and any document or provision in a document which
 51 purports to waive or preclude such right is void and
 52 unenforceable. The resident and the family or representative of
 53 the resident shall be consulted in choosing another facility. At
 54 least 45 days' notice of relocation or termination of residency
 55 from the facility unless, for medical reasons, the resident is
 56 certified by a physician to require an emergency relocation to a

57 ~~facility providing a more skilled level of care or the resident~~
 58 ~~engages in a pattern of conduct that is harmful or offensive to~~
 59 ~~other residents. In the case of a resident who has been~~
 60 ~~adjudicated mentally incapacitated, the guardian shall be given~~
 61 ~~at least 45 days' notice of a nonemergency relocation or~~
 62 ~~residency termination. Reasons for relocation shall be set forth~~
 63 ~~in writing. In order for a facility to terminate the residency~~
 64 ~~of an individual without notice as provided herein, the facility~~
 65 ~~shall show good cause in a court of competent jurisdiction.~~

66 Section 2. Section 429.285, Florida Statutes, is created
 67 to read:

68 429.285 Resident transfer or discharge; requirements and
 69 procedures; hearings.--

70 (1) As used in this section, the term:

71 (a) "Discharge" means to move a resident to a
 72 noninstitutional setting when the releasing facility ceases to
 73 be responsible for the resident's care.

74 (b) "Transfer" means to move a resident from the facility
 75 to another legally responsible institutional setting.

76 (2) A facility licensed under this part must permit a
 77 resident to remain in the facility. A resident may not be
 78 transferred or discharged from the facility unless:

79 (a) The transfer or discharge is necessary for the
 80 resident's welfare and the resident's needs cannot be met in the
 81 facility;

82 (b) The transfer or discharge is appropriate because the
 83 resident's health has improved sufficiently so the resident no
 84 longer needs the services provided by the facility;

85 (c) The health and safety of other residents or facility
 86 employees would be endangered;

87 (d) The resident has failed, after reasonable and
 88 appropriate notice, to provide payment for his or her stay in
 89 the facility; or

90 (e) The facility ceases to operate.

91 (3) When a transfer or discharge is initiated by the
 92 assisted living facility, the administrator of the facility that
 93 is transferring or discharging the resident, or an individual
 94 employed by the facility who is designated by the administrator
 95 of the facility to act on behalf of the administration, must
 96 sign the notice of transfer or discharge. Any notice indicating
 97 a medical reason for transfer or discharge must be signed by the
 98 resident's attending physician or include an attached written
 99 order for the transfer or discharge. The notice or the order
 100 must be signed by the resident's physician, treating physician,
 101 nurse practitioner, or physician assistant.

102 (4) (a) Each facility must notify the agency of any
 103 proposed transfer or discharge of a resident when such transfer
 104 or discharge is necessitated by changes in the physical plant of
 105 the facility that make the facility unsafe for the resident.

106 (b) Upon receipt of such a notice, the agency shall
 107 conduct an onsite inspection of the facility to verify the
 108 necessity of the transfer or discharge.

109 (5) A resident of a facility may challenge a decision by
 110 the facility to transfer or discharge the resident.

111 (6) A facility that has been reimbursed for reserving a
 112 bed and, for reasons other than those permitted under this

113 section, refuses to readmit a resident within the prescribed
 114 timeframe shall refund the bed reservation payment.

115 (7) At least 30 days prior to any proposed transfer or
 116 discharge, a facility must provide advance notice of the
 117 proposed transfer or discharge to the resident and, if known, to
 118 a family member or the resident's legal guardian or
 119 representative, except that in the following circumstances the
 120 facility shall give notice as soon as practicable before the
 121 transfer or discharge:

122 (a) The transfer or discharge is necessary for the
 123 resident's welfare and the resident's needs cannot be met in the
 124 facility, and the circumstances are documented in the resident's
 125 medical records by the resident's physician; or

126 (b) The health or safety of other residents or facility
 127 employees would be endangered, and the circumstances are
 128 documented in the resident's medical records by the resident's
 129 physician or the medical director if the resident's physician is
 130 not available.

131 (8) The notice required by subsection (7) must be in
 132 writing and must contain all information required by state and
 133 federal law, rules, or regulations applicable to Medicaid or
 134 Medicare cases. The agency shall develop a standard document to
 135 be used by all facilities licensed under this part for purposes
 136 of notifying residents of a transfer or discharge. Such document
 137 must include a means for a resident to request the local long-
 138 term care ombudsman council to review the notice and request
 139 information about or assistance with initiating a fair hearing
 140 with the Department of Children and Family Services' Office of

141 | Appeals Hearings. In addition to any other pertinent information
 142 | included, the form shall:

143 | (a) Specify the reason allowed under federal or state law
 144 | that the resident is being transferred or discharged, with an
 145 | explanation to support this action.

146 | (b) State the effective date of the transfer or discharge
 147 | and the location to which the resident is being transferred or
 148 | discharged.

149 | (c) Clearly describe the resident's right to appeal and
 150 | the procedures for filing an appeal, including the right to
 151 | request the local long-term care ombudsman council to review the
 152 | notice of transfer or discharge.

153 |

154 | A copy of the notice must be placed in the resident's clinical
 155 | record, and a copy must be transmitted to the resident's legal
 156 | guardian or representative and to the local long-term care
 157 | ombudsman council within 5 business days after signature by the
 158 | resident or the resident's legal guardian or representative .

159 | (9) A resident may request that the local long-term care
 160 | ombudsman council review any notice of transfer or discharge
 161 | given to the resident. When requested by a resident to review a
 162 | notice of transfer or discharge, the local long-term care
 163 | ombudsman council shall do so within 7 days after receipt of the
 164 | request. The facility administrator, or the administrator's
 165 | designee, must forward the request for review contained in the
 166 | notice to the local long-term care ombudsman council within 24
 167 | hours after such request is submitted. Failure to forward the
 168 | request within 24 hours after the request is submitted shall

169 toll the running of the 30-day advance notice period until the
170 request has been forwarded.

171 (10) (a) A resident is entitled to a fair hearing to
172 challenge a facility's proposed transfer or discharge. The
173 resident or the resident's legal guardian or representative may
174 request a hearing at any time within 90 days after the
175 resident's receipt of the facility's notice of the proposed
176 transfer or discharge.

177 (b) If a resident or the resident's legal guardian or
178 representative requests a hearing within 10 days after receiving
179 the notice from the facility, the request shall stay the
180 proposed transfer or discharge pending a hearing decision. The
181 facility may not take action, and the resident may remain in the
182 facility, until the outcome of the initial fair hearing, which
183 must be completed within 90 days after receipt of a request for
184 a fair hearing.

185 (c) If the resident or the resident's legal guardian or
186 representative fails to request a hearing within 10 days after
187 receipt of the facility notice of the proposed transfer or
188 discharge, the facility may transfer or discharge the resident
189 after 30 days from the date the resident received the notice.

190 (11) Notwithstanding paragraph (10) (b), an emergency
191 transfer or discharge may be implemented as necessary pursuant
192 to state law during the period of time after the notice is given
193 and before the time a hearing decision is rendered. Notice of an
194 emergency transfer or discharge to the resident, the resident's
195 legal guardian or representative, and the local long-term care
196 ombudsman council if requested pursuant to subsection (9) must

197 be by telephone or in person. This notice shall be given before
 198 the transfer or discharge, if possible, or as soon thereafter as
 199 practicable. A local long-term care ombudsman council conducting
 200 a review under this subsection shall do so within 24 hours after
 201 receipt of the request. The resident's file must be documented
 202 to show who was contacted, whether the contact was by telephone
 203 or in person, and the date and time of the contact. If the
 204 notice is not given in writing, written notice meeting the
 205 requirements of subsection (8) must be given the next working
 206 day.

207 (12) After receipt of any notice required under this
 208 section, the local long-term care ombudsman council may request
 209 a private informal conversation with a resident to whom the
 210 notice is directed, and, if known, a family member or the
 211 resident's legal guardian or representative, to ensure that the
 212 facility is proceeding with the transfer or discharge in
 213 accordance with the requirements of this section. If requested,
 214 the local long-term care ombudsman council shall assist the
 215 resident with filing an appeal of the proposed transfer or
 216 discharge.

217 (13) The following persons must be present at all hearings
 218 authorized under this section:

219 (a) The resident or the resident's legal guardian or
 220 representative.

221 (b) The facility administrator or the facility's legal
 222 representative or designee.

223

224 A representative of the local long-term care ombudsman council
 225 may be present at all hearings authorized by this section.

226 (14) (a) The Department of Children and Family Services'
 227 Office of Appeals Hearings shall conduct a hearing under this
 228 section. The office shall notify the facility of a resident's
 229 request for a hearing.

230 (b) The Department of Children and Family Services shall,
 231 by rule, establish procedures to be used for fair hearings
 232 requested by residents. These procedures shall be equivalent to
 233 the procedures used for fair hearings for other Medicaid cases,
 234 chapter 10-2, part VI, Florida Administrative Code. The burden
 235 of proof must be clear and convincing evidence. A hearing
 236 decision must be rendered within 90 days after receipt of the
 237 request for hearing.

238 (c) If the hearing decision is favorable to the resident
 239 who has been transferred or discharged, the resident must be
 240 readmitted to the facility's first available bed.

241 (d) The decision of the hearing officer shall be final.
 242 Any aggrieved party may appeal the decision to the district
 243 court of appeal in the appellate district in which the facility
 244 is located. Review procedures shall be conducted in accordance
 245 with the Florida Rules of Appellate Procedure.

246 (15) The agency may adopt rules pursuant to ss. 120.536(1)
 247 and 120.54 to administer this section.

248 Section 3. Paragraphs (b) and (c) of subsection (3) of
 249 section 429.07, Florida Statutes, are amended to read:

250 429.07 License required; fee.--

251 (3) In addition to the requirements of s. 408.806, each
 252 license granted by the agency must state the type of care for
 253 which the license is granted. Licenses shall be issued for one
 254 or more of the following categories of care: standard, extended
 255 congregate care, limited nursing services, or limited mental
 256 health.

257 (b) An extended congregate care license shall be issued to
 258 facilities providing, directly or through contract, services
 259 beyond those authorized in paragraph (a), including acts
 260 performed pursuant to part I of chapter 464 by persons licensed
 261 thereunder, and supportive services defined by rule to persons
 262 who otherwise would be disqualified from continued residence in
 263 a facility licensed under this part.

264 1. In order for extended congregate care services to be
 265 provided in a facility licensed under this part, the agency must
 266 first determine that all requirements established in law and
 267 rule are met and must specifically designate, on the facility's
 268 license, that such services may be provided and whether the
 269 designation applies to all or part of a facility. Such
 270 designation may be made at the time of initial licensure or
 271 relicensure, or upon request in writing by a licensee under this
 272 part and part II of chapter 408. Notification of approval or
 273 denial of such request shall be made in accordance with part II
 274 of chapter 408. Existing facilities qualifying to provide
 275 extended congregate care services must have maintained a
 276 standard license and may not have been subject to administrative
 277 sanctions during the previous 2 years, or since initial

278 licensure if the facility has been licensed for less than 2
 279 years, for any of the following reasons:

- 280 a. A class I or class II violation;
- 281 b. Three or more repeat or recurring class III violations
 282 of identical or similar resident care standards as specified in
 283 rule from which a pattern of noncompliance is found by the
 284 agency;
- 285 c. Three or more class III violations that were not
 286 corrected in accordance with the corrective action plan approved
 287 by the agency;
- 288 d. Violation of resident care standards resulting in a
 289 requirement to employ the services of a consultant pharmacist or
 290 consultant dietitian;
- 291 e. Denial, suspension, or revocation of a license for
 292 another facility under this part in which the applicant for an
 293 extended congregate care license has at least 25 percent
 294 ownership interest; or
- 295 f. Imposition of a moratorium pursuant to this part or
 296 part II of chapter 408 or initiation of injunctive proceedings.

297 2. Facilities that are licensed to provide extended
 298 congregate care services shall maintain a written progress
 299 report on each person who receives such services, which report
 300 describes the type, amount, duration, scope, and outcome of
 301 services that are rendered and the general status of the
 302 resident's health. A registered nurse, or appropriate designee,
 303 representing the agency shall visit such facilities at least
 304 quarterly to monitor residents who are receiving extended
 305 congregate care services and to determine if the facility is in

306 compliance with this part, part II of chapter 408, and rules
 307 that relate to extended congregate care. One of these visits may
 308 be in conjunction with the regular survey. The monitoring visits
 309 may be provided through contractual arrangements with
 310 appropriate community agencies. A registered nurse shall serve
 311 as part of the team that inspects such facility. The agency may
 312 waive one of the required yearly monitoring visits for a
 313 facility that has been licensed for at least 24 months to
 314 provide extended congregate care services, if, during the
 315 inspection, the registered nurse determines that extended
 316 congregate care services are being provided appropriately, and
 317 if the facility has no class I or class II violations and no
 318 uncorrected class III violations. Before such decision is made,
 319 the agency shall consult with the long-term care ombudsman
 320 council for the area in which the facility is located to
 321 determine if any complaints have been made and substantiated
 322 about the quality of services or care. The agency may not waive
 323 one of the required yearly monitoring visits if complaints have
 324 been made and substantiated.

325 3. Facilities that are licensed to provide extended
 326 congregate care services shall:

327 a. Demonstrate the capability to meet unanticipated
 328 resident service needs.

329 b. Offer a physical environment that promotes a homelike
 330 setting, provides for resident privacy, promotes resident
 331 independence, and allows sufficient congregate space as defined
 332 by rule.

333 c. Have sufficient staff available, taking into account
 334 the physical plant and firesafety features of the building, to
 335 assist with the evacuation of residents in an emergency, as
 336 necessary.

337 d. Adopt and follow policies and procedures that maximize
 338 resident independence, dignity, choice, and decisionmaking to
 339 permit residents to age in place to the extent possible, so that
 340 moves due to changes in functional status are minimized or
 341 avoided.

342 e. Allow residents or, if applicable, a resident's
 343 representative, designee, surrogate, guardian, or attorney in
 344 fact to make a variety of personal choices, participate in
 345 developing service plans, and share responsibility in
 346 decisionmaking.

347 f. Implement the concept of managed risk.

348 g. Provide, either directly or through contract, the
 349 services of a person licensed pursuant to part I of chapter 464.

350 h. In addition to the training mandated in s. 429.52,
 351 provide specialized training as defined by rule for facility
 352 staff.

353 4. Facilities licensed to provide extended congregate care
 354 services are exempt from the criteria for continued residency as
 355 set forth in rules adopted under s. 429.41. Facilities so
 356 licensed shall adopt their own requirements within guidelines
 357 for continued residency set forth by rule. However, such
 358 facilities may not serve residents who require 24-hour nursing
 359 supervision. Facilities licensed to provide extended congregate

360 care services shall provide each resident with a written copy of
 361 facility policies governing admission and retention.

362 5. The primary purpose of extended congregate care
 363 services is to allow residents, as they become more impaired,
 364 the option of remaining in a familiar setting from which they
 365 would otherwise be disqualified for continued residency. A
 366 facility licensed to provide extended congregate care services
 367 may also admit an individual who exceeds the admission criteria
 368 for a facility with a standard license, if the individual is
 369 determined appropriate for admission to the extended congregate
 370 care facility.

371 6. Before admission of an individual to a facility
 372 licensed to provide extended congregate care services, the
 373 individual must undergo a medical examination as provided in s.
 374 429.26(4) and the facility must develop a preliminary service
 375 plan for the individual.

376 7. When a facility can no longer provide or arrange for
 377 services in accordance with the resident's service plan and
 378 needs and the facility's policy, the facility shall make
 379 arrangements for relocating the person in accordance with s.
 380 429.285 ~~429.28(1)(k)~~.

381 8. Failure to provide extended congregate care services
 382 may result in denial of extended congregate care license
 383 renewal.

384 9. No later than January 1 of each year, the department,
 385 in consultation with the agency, shall prepare and submit to the
 386 Governor, the President of the Senate, the Speaker of the House
 387 of Representatives, and the chairs of appropriate legislative

388 committees, a report on the status of, and recommendations
 389 related to, extended congregate care services. The status report
 390 must include, but need not be limited to, the following
 391 information:

392 a. A description of the facilities licensed to provide
 393 such services, including total number of beds licensed under
 394 this part.

395 b. The number and characteristics of residents receiving
 396 such services.

397 c. The types of services rendered that could not be
 398 provided through a standard license.

399 d. An analysis of deficiencies cited during licensure
 400 inspections.

401 e. The number of residents who required extended
 402 congregate care services at admission and the source of
 403 admission.

404 f. Recommendations for statutory or regulatory changes.

405 g. The availability of extended congregate care to state
 406 clients residing in facilities licensed under this part and in
 407 need of additional services, and recommendations for
 408 appropriations to subsidize extended congregate care services
 409 for such persons.

410 h. Such other information as the department considers
 411 appropriate.

412 (c) A limited nursing services license shall be issued to
 413 a facility that provides services beyond those authorized in
 414 paragraph (a) and as specified in this paragraph.

415 1. In order for limited nursing services to be provided in
 416 a facility licensed under this part, the agency must first
 417 determine that all requirements established in law and rule are
 418 met and must specifically designate, on the facility's license,
 419 that such services may be provided. Such designation may be made
 420 at the time of initial licensure or relicensure, or upon request
 421 in writing by a licensee under this part and part II of chapter
 422 408. Notification of approval or denial of such request shall be
 423 made in accordance with part II of chapter 408. Existing
 424 facilities qualifying to provide limited nursing services shall
 425 have maintained a standard license and may not have been subject
 426 to administrative sanctions that affect the health, safety, and
 427 welfare of residents for the previous 2 years or since initial
 428 licensure if the facility has been licensed for less than 2
 429 years.

430 2. Facilities that are licensed to provide limited nursing
 431 services shall maintain a written progress report on each person
 432 who receives such nursing services, which report describes the
 433 type, amount, duration, scope, and outcome of services that are
 434 rendered and the general status of the resident's health. A
 435 registered nurse representing the agency shall visit such
 436 facilities at least twice a year to monitor residents who are
 437 receiving limited nursing services and to determine if the
 438 facility is in compliance with applicable provisions of this
 439 part, part II of chapter 408, and related rules. The monitoring
 440 visits may be provided through contractual arrangements with
 441 appropriate community agencies. A registered nurse shall also
 442 serve as part of the team that inspects such facility.

443 3. A person who receives limited nursing services under
 444 this part must meet the admission criteria established by the
 445 agency for assisted living facilities. When a resident no longer
 446 meets the admission criteria for a facility licensed under this
 447 part, arrangements for relocating the person shall be made in
 448 accordance with s. 429.285 ~~429.28(1)(k)~~, unless the facility is
 449 licensed to provide extended congregate care services.

450 Section 4. Subsection (1) of section 429.31, Florida
 451 Statutes, is amended to read:

452 429.31 Closing of facility; notice; penalty.--

453 (1) In addition to the requirements of part II of chapter
 454 408, the facility shall inform each resident or the next of kin,
 455 legal representative, or agency acting on each resident's
 456 behalf, of the fact and the proposed time of discontinuance of
 457 operation, following the notification requirements provided in
 458 s. 429.285 ~~429.28(1)(k)~~. In the event a resident has no person
 459 to represent him or her, the facility shall be responsible for
 460 referral to an appropriate social service agency for placement.

461 Section 5. This act shall take effect July 1, 2008.

