

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1153 Citizen Support and Direct-Support Organizations

**SPONSOR(S):** Government Operations Subcommittee, Hager

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1194

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	10 Y, 2 N, As CS	Stramski	Williamson
2) Government Operations Appropriations Subcommittee		White	Topp
3) State Affairs Committee			

### SUMMARY ANALYSIS

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily created entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. While CSOs and DSOs are subject to audits by the Auditor General and are subject to public records requirements, there is no single requirement for CSO and DSO reporting imposed by law.

There are many statutes that create or authorize the establishment of CSOs and DSOs. However, there is no formal review process in law to determine whether a CSO or DSO was established pursuant to such authorization, or whether the rationale for the authorization remains applicable.

The bill creates new reporting and transparency requirements for each CSO and DSO that is created or authorized pursuant to law or executive order and created, approved, or administered by a state agency. The bill requires each CSO and DSO to report information related to its organization, mission, and finances to the agency it was created to support. A contract between an agency and a CSO or DSO must require the CSO or DSO to provide such information to the agency, and must require the agency to terminate the contract if the CSO or DSO fails to provide the information for two consecutive years. The bill requires each agency receiving such information from a CSO or DSO to make the information available on its website, and to provide a link to the CSO's or DSO's website if such a website exists.

The bill requires each agency to annually report to the Governor, the Legislature, and the Office of Program Policy Analysis and Government Accountability the information provided to the agency by the CSO or DSO, and to make a recommendation on whether to continue, terminate, or modify the agency's association with the CSO or DSO.

The bill provides that a law creating or authorizing the creation of a CSO or DSO must state that the creation or authorization is repealed on October 1 of the fifth year after enactment, unless reviewed and saved from repeal through reenactment by the Legislature. The bill directs the Legislature to review CSOs and DSOs in existence on the effective date of the bill by July 1, 2019.

The bill provides for the future repeal of certain sections of law authorizing CSOs and DSOs unless those sections are reviewed and saved from repeal by the Legislature.

The bill may have an indeterminate fiscal impact on state government. The bill does not appear to have a fiscal impact on local government.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily created entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. While CSOs and DSOs are subject to audits by the Auditor General<sup>1</sup> and are subject to public records requirements, there is no single requirement for CSO and DSO reporting imposed by law.

Section 215.981, F.S., requires each CSO and DSO with annual expenditures in excess of \$100,000, created or authorized pursuant to law, and created, approved, or administered by a state agency, other than a university, community college, or district school board, to provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the CSO or DSO. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency. Additionally, the Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of the CSO's or DSO's accounts and records.<sup>2</sup> The Auditor General is authorized to require and receive any records from the CSO or DSO, or from its independent auditor.<sup>3</sup>

Notwithstanding the above, CSOs and DSOs for the Department of Environmental Protection (DEP) or the Department of Agriculture and Consumer Services that are not for profit and that have annual expenditures of less than \$300,000 are not required to have an independent audit. These departments are required to establish accounting and financial management guidelines for the CSOs and DSOs under their jurisdiction, and must annually conduct operational and financial reviews of a selected number of CSOs or DSOs that fall below the \$300,000 threshold.<sup>4</sup>

There are many statutes that create or authorize the establishment of CSOs and DSOs. However, there is no formal review process in law to determine whether a CSO or DSO was established pursuant to such authorization, or whether the rationale for the authorization remains applicable.

Statutes that create or authorize the establishment of CSOs and DSOs include in part the following:

- Section 14.29(9), F.S., assigns the Florida Commission on Community Service to the Executive Office of the Governor to serve as an advisory board on matters relating to volunteerism and community service. Pursuant to the law, the commission may establish a DSO to receive, hold, invest, and administer property and funds and to make expenditures to or for the benefit of community service programs.
- Section 16.616, F.S., requires the Department of Legal Affairs to establish a DSO that supports the Council on the Social Status of Black Men and Boys and develops funding initiatives.
- Section 20.2551, F.S., specifies the organizational requirements and duties for a CSO to support DEP or individual units of DEP.
- Section 39.0011, F.S., authorizes the Office of Adoption and Child Protection in the Executive Office of the Governor to establish a DSO to assist the state in carrying out its purposes and

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<sup>1</sup> Section 11.45(3), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 11.45(3)(d), F.S.

<sup>4</sup> Section 215.981, F.S.

responsibilities regarding the promotion of adoption, support of adoptive families, and prevention of child abuse.

- Section 39.8298, F.S., authorizes the Statewide Guardian Ad Litem Office, which has oversight responsibilities for and provides technical assistance to all guardian ad litem and attorney ad litem programs located within the judicial circuits, to create a DSO tasked in part with raising funds and making expenditures to or for the direct or indirect benefit of the Statewide Guardian Ad Litem Office.
- Section 250.115, F.S., authorizes the creation of a DSO for the Department of Military Affairs tasked in part with raising funds and making expenditures to or for the direct or indirect benefit of the Department of Military Affairs. Section 250.116, F.S., specifies that the DSO may provide assistance in the operation of the Soldiers and Airmen Assistance Program, which provides financial assistance and services to eligible servicemembers of the Florida National Guard and eligible members of their families.
- Section 257.43, F.S., authorizes the Division of Library and Information Services of the Department of State to support the establishment of a CSO to provide assistance, funding, and promotional support for the library, archives, and records management programs of the division.
- Section 258.015, F.S., specifies the organizational requirements and duties of a CSO to support the state park system or individual units of the state park system.
- Section 259.10521, F.S., specifies the organizational requirements and duties of a CSO to support the Babcock Ranch Preserve, with approval of the Fish and Wildlife Conservation Commission and the Florida Forest Service.
- Section 265.703, F.S., authorizes the Division of Cultural Affairs of the Department of State to support the establishment of CSOs to provide assistance, funding, and promotional support for the cultural, arts, historical, and museum programs of the division.
- Section 267.17, F.S., authorizes the Division of Historical Resources of the Department of State to support the establishment of CSOs to provide assistance, funding, and promotional support for the archaeology, museum, folklife, and historic preservation programs of the division.
- Section 288.1226, F.S., establishes the Florida Tourism Industry Marketing Corporation as a DSO of Enterprise Florida, Inc., intended to perform duties necessary to carry out the four-year marketing plan of Enterprise Florida, and to support state programs that relate to the statewide, national, and international promotion and marketing of tourism. This DSO staffs the Division of Tourism Marketing in Enterprise Florida.<sup>5</sup>
- Section 288.809, F.S., establishes the Florida Intergovernmental Relations Foundation as a DSO organized and operated exclusively to solicit, receive, hold, invest, and administer property and, subject to the approval of the state protocol officer, to make expenditures to or for the promotion of intergovernmental relations programs.
- Section 288.923, F.S., authorizes Enterprise Florida, Inc. to contract with the Florida Tourism Industry Marketing Corporation, a direct-support organization established in s. 288.1226, F.S., to execute tourism promotion and marketing services, functions, and programs for the state.
- Section 292.055, F.S., authorizes the Department of Veterans' Affairs to establish a DSO to provide assistance, funding, and support for the department, the veterans of the state, and congressionally chartered veteran service organizations having subdivisions that are incorporated in this state.

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<sup>5</sup> Section 288.92, F.S., authorizes Enterprise Florida, Inc., to create and dissolve divisions as necessary to carry out its mission. At a minimum, Enterprise Florida, Inc., must have divisions related to certain areas, including Tourism Marketing. Section 288.923, F.S., also establishes the division of Tourism Marketing to be staffed by the DSO.

- Section 379.223, F.S., permits the Fish and Wildlife Conservation Commission to authorize the establishment of CSOs to provide assistance, funding, and promotional support for the programs of the commission.
- Section 413.0111, F.S., authorizes the Division of Blind Services to incorporate a DSO to conduct programs and activities, initiate developmental projects, raise and administer funds or property, and make expenditures for the direct or indirect benefit of the state and for blind persons in Florida.
- Section 413.615, F.S., authorizes the Florida Endowment Foundation for Vocational Rehabilitation as a DSO of the Division of Vocational Rehabilitation within the Department of Education to encourage public and private support to enhance vocational rehabilitation and employment of citizens who are disabled.
- Section 430.82, F.S., permits the Department of Elderly Affairs to establish a DSO to provide assistance, funding, and support for the department in carrying out its mission.
- Section 570.903, F.S., permits the Department of Agriculture and Consumer Services to authorize the establishment of DSOs to provide assistance, funding, and promotional support for the museums and other programs of the department.
- Section 570.9135, F.S., creates the Florida Beef Council, Inc., as a DSO of the Department of Agriculture and Consumer Services to conduct programs of promotion, research, and consumer or industry information designed to strengthen the cattle industry's market position in the state. The DSO may impose an assessment of up to \$1 on each head of cattle sold in the state in order to fund its activities.
- Section 626.9895, F.S., authorizes the Division of Insurance Fraud of the Department of Financial Services to establish a DSO, to be known as the Automobile Insurance Fraud Strike Force, whose sole purpose is to support the prosecution, investigation, and prevention of motor vehicle insurance fraud.
- Section 683.231, F.S., authorizes the Department of Law Enforcement to establish a CSO to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children's Day, designated each year in remembrance of Florida's past and present missing children and in recognition of continued state efforts to protect the safety of children through prevention, education, and community involvement.<sup>6</sup>
- Section 744.7082, F.S., specifies the organizational requirements for a DSO to support the Statewide Public Guardianship Office within the Department of Elderly Affairs.
- Section 893.055(11), F.S., authorizes the Department of Health to establish a DSO to provide assistance, funding, and promotional support for the activities of the prescription drug monitoring program.
- Section 944.802, F.S., specifies the organizational requirements and duties for a DSO to support the Department of Corrections or individual units of the state correctional system.
- Section 960.002, F.S., permits the Governor to authorize a DSO to assist in addressing the needs of victims of adult and juvenile crime. The DSO must operate under a contract with the Executive Office of the Governor.
- Section 985.672, F.S., specifies the organizational requirements and duties for a DSO to support the Department of Juvenile Justice or the juvenile justice system operated by a county commission or a circuit board.

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<sup>6</sup> Section 683.23, F.S.

- Section 1009.983, F.S., authorizes the Florida Prepaid College Board, which administers the Florida College Savings Program, to establish a DSO to make expenditures to or for the benefit of the board, and to administer the Florida Prepaid Tuition Scholarship Program, which provides economically disadvantaged youth with prepaid postsecondary tuition scholarships.<sup>7</sup>

## **Effect of Bill**

The bill creates new reporting and transparency requirements for each CSO and DSO that is created or authorized pursuant to law or executive order and created, approved, or administered by a state agency. The bill requires each CSO and DSO to report information related to its organization, mission, and finances to the agency it was created to support. Specifically, the CSO or DSO must provide:

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the CSO or DSO;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's code of ethics; and
- A copy of the organization's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).

A contract between an agency and a CSO or DSO entered into on or after July 1, 2014, must require the CSO or DSO to submit the information that must be provided to an agency pursuant to this bill. The contract also must require the agency to terminate the contract if a CSO or DSO fails to submit the required information for two consecutive years. Each agency receiving such information from a CSO or DSO must make the information available on its website, and must provide a link to the CSO's or DSO's website if such a website exists.

The bill requires each agency to report the information provided to the agency by the CSO or DSO by August 30 of each year to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability, and to make a recommendation on whether to continue, terminate, or modify the agency's association with the CSO or DSO.

The bill provides that a law creating or authorizing the creation of a CSO or DSO must state that the creation authorization is repealed on October 1 of the fifth year after enactment, unless reviewed and saved from repeal through reenactment by the Legislature. The bill directs the Legislature to review CSOs and DSOs in existence on the effective date of the bill by July 1, 2019.

The bill provides for the future repeal of certain sections of law establishing, authorizing, or permitting the creation of CSOs or DSOs, or specifying requirements for and duties of a CSO or DSO. The bill does not provide for future repeal of all sections pertaining to a CSO or DSO. For example, the bill excludes university DSOs and the CSO authorized to support the Florida Historic Capitol.

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<sup>7</sup> Section 1009.984, F.S.

The bill provides for repeal of the sections provided in the following chart, unless reviewed and saved from repeal by the Legislature:

Bill Section	Statute	Organization	Repealed October 1 of:
5	39.0011	Office of Adoption and Child Protection DSO (Executive Office of the Governor)	2017
7	250.115	Department of Military Affairs DSO	2017
16	292.055	Department of Veterans' Affairs DSO	2017
18	413.0111	Blind Services DSO	2017
19	413.615	Florida Endowment for Vocational Rehabilitation (DSO of Department of Education)	2017
20	430.82	Department of Elderly Affairs DSO	2017
26	893.055	Prescription drug monitoring program DSO	2017
30	1009.983	Florida Prepaid College Board DSO	2017
1	14.29(9)	Florida Commission on Community Service DSO	2018
2	16.616	Council on Social Status of Black Men and Boys DSO	2018
6	39.8298	Guardian Ad Litem DSO	2018
24	683.231	Florida Missing Children's Day CSO	2018
25	744.7082	Statewide Public Guardianship Office DSO	2018
27	944.802	Department of Corrections DSO	2018
28	960.002	DSO to assist victims of crime	2018
29	985.672	Department of Juvenile Justice DSO	2018
4	20.2551	Department of Environmental Protection CSO	2019
8	257.43	Division of Library and Information Services of the Department of State CSO	2019
9	258.015	Division of Recreation and Parks of the Department of Environmental Protection CSOs	2019
10	259.10521	Babcock Ranch CSO	2019
11	265.703	Department of State CSO	2019
12	267.17	Division of Historical Resources of the Department of State CSOs	2019
13	288.1226	Florida Tourism Industry Marketing Corporation (DSO of Enterprise Florida, Inc.) and the Division of Tourism Marketing <sup>8</sup>	2019
14	288.809	Florida Intergovernmental Relations Foundation (DSO of the Executive Office of the Governor)	2019
15	288.923	Duties of the Division of Tourism Marketing	2019
17	379.223	Fish and Wildlife Conservation Commission CSOs	2019
21	570.903	Department of Agriculture and Consumer Services DSO	2019
22	570.9135	Florida Beef Council (DSO of the Department of Agriculture and Consumer Services)	2019
23	626.9895	Motor vehicle insurance fraud DSO	2019
			TOTAL: 29

18 of the organizations listed above have specified in statute what happens to the funds held in the CSO or DSO if the organization ceases to exist. The remaining 11 organizations above have nothing in statute that directs what should be done with the funds held in the CSO or DSO if the organization ceases to exist.

## B. SECTION DIRECTORY:

<sup>8</sup> See FN 5.

Section 1 amends s. 14.29, F.S.; providing for future review and repeal of provisions authorizing the Florida Commission on Community Service to establish and operate a DSO.

Section 2 amends s. 16.616, F.S.; providing for future review and repeal of the DSO established within the Department of Legal Affairs.

Section 3 creates s. 20.058, F.S.; requiring CSOs and DSOs to annually submit certain information to the agency the organization was created to support; requiring each agency receiving such information to post submissions on the agency's website; requiring each agency receiving such information to annually submit a report to the Governor, the Legislature, and the Office of Program Policy Analysis and Government Accountability; providing report requirements; requiring that a contract entered into between an agency and a CSO or DSO on or after July 1, 2014, contain certain provisions; requiring that each CSO or DSO created or authorized by law be subject to legislative review and repeal; and requiring that CSOs and DSOs in existence as of a certain date be subject to future legislative review.

Section 4 amends s. 20.2551, F.S.; providing for future review and repeal of the CSO established within DEP.

Section 5 amends s. 39.0011, F.S.; providing for future review and repeal of the DSO of the Office of Adoption and Child Protection.

Section 6 amends s. 39.8298, F.S.; providing for future review and repeal of the Statewide Guardian Ad Litem Office's authorization to create a DSO.

Section 7 amends s. 250.115, F.S.; providing for future review and repeal of the DSO of the Department of Military Affairs.

Section 8 amends s. 257.43, F.S.; providing for future review and repeal of the CSO of the Division of Library and Information Services of the Department of State.

Section 9 amends s. 258.015, F.S.; providing for future review and repeal of provisions relating to CSOs under the Division of Recreation and Parks of DEP.

Section 10 amends s. 259.10521, F.S.; providing for future review and repeal of the CSO benefitting the Babcock Ranch Preserve.

Section 11 amends s. 265.703, F.S.; providing for future review and repeal of the CSO of the Division of Cultural Affairs of the Department of State.

Section 12 amends s. 267.17, F.S.; providing for future review and repeal of the CSO of the Division of Historical Resources of the Department of State.

Section 13 amends s. 288.1226, F.S.; providing for future review and repeal of the Florida Tourism Industry Marketing Corporation.

Section 14 amends s. 288.809, F.S.; providing for future review and repeal of the Florida Intergovernmental Relations Foundation.

Section 15 amends s. 288.923, F.S.; providing for future review and repeal of the Division of Tourism Marketing of Enterprise Florida, Inc.

Section 16 amends s. 292.055, F.S.; providing for future review and repeal of the DSO of the Department of Veterans' Affairs.

Section 17 amends s. 379.223, F.S.; providing for future review and repeal of the Fish and Wildlife Conservation Commission's authorization to establish CSOs.

Section 18 amends s. 413.0111, F.S.; providing for future review and repeal of the DSO of the Division of Blind Services of the Department of Education.

Section 19 amends s. 413.615, F.S.; providing for future review and repeal of the Florida Endowment Foundation for Vocational Rehabilitation.

Section 20 amends s. 430.82, F.S.; providing for future review and repeal of the Department of Elderly Affairs' authority to establish a DSO.

Section 21 amends s. 570.903, F.S.; providing for future review and repeal of the Department of Agriculture and Consumer Services' authority to establish a DSO.

Section 22 amends s. 570.9135, F.S.; providing for future review and repeal of Florida Beef Council, Inc.

Section 23 amends s. 626.9895, F.S.; providing for future review and repeal of the Division of Insurance Fraud of the Department of Financial Services' authority to establish a DSO.

Section 24 amends s. 683.231, F.S.; providing for future review and repeal of the Department of Law Enforcement's authority to establish a CSO for Florida Missing Children's Day.

Section 25 amends s. 744.7082, F.S.; providing for future review and repeal of the DSO supporting the Statewide Public Guardianship Office.

Section 26 amends s. 893.055, F.S.; providing for future review and repeal of the Department of Health's authority to establish a DSO supporting the prescription drug monitoring program.

Section 27 amends s. 944.802, F.S.; providing for future review and repeal of the Department of Corrections' authority to establish a DSO.

Section 28 amends s. 960.002, F.S.; providing for future review and repeal of the Governor's authority to authorize a DSO to assist victims of adult and juvenile crime.

Section 29 amends s. 985.672, F.S.; providing for future review and repeal of the Department of Juvenile Justice's DSO.

Section 30 amends s. 1009.983, F.S.; providing for future review and repeal of the Florida Prepaid College Board's authority to establish a DSO.

Section 31 provides that the bill takes effect upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

See FISCAL COMMENTS.

#### **2. Expenditures:**

See FISCAL COMMENTS.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.



2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be an indeterminate fiscal impact to CSOs and DSOs caused by the reporting requirements in this bill.

D. FISCAL COMMENTS:

If the bill results in the repeal of CSOs or DSOs, the state may experience indeterminate negative and positive fiscal impacts.

An indeterminate negative fiscal impact may result from reduced revenues available to certain public entities that may receive support from CSOs or DSOs.<sup>9</sup>

The bill requires agencies to prepare and submit reports relating to information provided to them by CSOs and DSOs, and to make such information available on agency websites. These reporting and website modification requirements may result in a minimal negative fiscal impact on agencies.

An indeterminate positive fiscal impact on the state might result following the repeal of CSOs or DSOs if the state was previously required to provide financial support to such CSOs or DSOs; for example if the state was required to provide for reimbursement of per diem and travel reimbursements for the board members of such CSOs and DSOs.<sup>10</sup>

11 of the 29 CSOs and DSOs have nothing in statute that directs what should be done with the funds held by the CSO or DSO if the organization ceases to exist. The statutes direct what happens to the funds held by the other 18 organizations. For example, if the Florida Endowment Foundation for Vocational Rehabilitation is repealed and the contract is terminated, the statute states that the funds in the foundation would revert to the state. Another example is if the Automotive Insurance Fraud Strike Force is repealed, the statute directs the funds to revert to the Division of Insurance Fraud of the Department of Financial Services.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for executive branch rulemaking or rulemaking authority.

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<sup>9</sup> The Department of Elderly Affairs has indicated that if this bill results in the repeal of the authority for the Foundation for Indigent Guardianship, Inc., a DSO, the department would no longer receive support for its public guardianship programs through the State of Florida Public Guardianship Pooled Special Needs Trust. Agency Bill Analysis for HB 1153 by the Department of Elderly Affairs, March 5, 2014 (on file with the Government Operations Subcommittee).

<sup>10</sup> See for example s. 14.29(6), F.S.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

#### Other Comments: Reporting Requirements for CSOs and DSOs

The bill requires each CSO and DSO to annually submit to the agency that the organization was created to support a copy of the organization's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990). However, not all CSOs and DSOs are required by law to have federal tax exempt status.<sup>11</sup>

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 31, 2014, the Government Operations Subcommittee adopted a proposed committee substitute for HB 1153 and reported the bill favorably as a committee substitute. The committee substitute:

- Removes certain proposed CSO and DSO annual reporting requirements related to expenditures and capital improvements.
- Revises the proposed annual report date by changing it to August 30 instead of August 1.
- Clarifies that any contract entered into between an agency and a CSO or DSO on or after July 1, 2014, must contain provisions that require the CSO or DSO to submit a report and requires the agency head to terminate the contract if the CSO or DSO fails to do so for two consecutive years.

This analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.

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<sup>11</sup> See for example s. 744.7082, F.S.