

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Higher Education

BILL: CS/SB 1458

INTRODUCER: Education Committee and Senator Simmons

SUBJECT: Direct-support Organization

DATE: April 13, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Benvenisty</u>	<u>Graf</u>	<u>ED</u>	Fav/CS
2.	<u>Flynn</u>	<u>Elwell</u>	<u>AHE</u>	Recommend: Favorable
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1458 removes the scheduled repeal date for the Blind Services Foundation of Florida, Inc., which serves as a direct-support organization for the Division of Blind Services.

The bill has no impact on state revenues or expenditures.

The bill takes effect July 1, 2017.

II. Present Situation:

Citizen-Support Organizations and Direct-Support Organizations

Citizen-support organizations (CSOs) and direct-support organizations (DSOs) are statutorily created non-profit organizations¹ authorized to carry out specific tasks in support of public entities or public causes. The function and purpose of a CSO or DSO are prescribed by an enacting statute and a written contract with the agency the CSO or DSO supports.²

¹ Chapter 617, F.S.

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

CSO and DSO Transparency and Reporting Requirements

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

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the organization;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's code of ethics; and
- A copy of the organization's most recent Internal Revenue Service (IRS) Form 990.⁵

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

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

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

CSO and DSO Audit Requirements

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

³ Section 3, ch. 2014-96, L.O.F

⁴ Section 20.058(1), F.S.

⁵ The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501. 26 C.F.R. 1.6033-2.

⁶ Section 20.058(2), F.S.

⁷ *Id.*

⁸ Section 20.058(4), F.S.

⁹ *Id.*

¹⁰ *Id.* at (3).

¹¹ *Id.* at (5).

¹² The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is \$300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.

Auditor General. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the CSO or DSO supports.¹³ Additionally, the Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of a CSO's or DSO's accounts and records.¹⁴

CSO and DSO Ethics Code Requirement

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

The Division of Blind Services

The Division of Blind Services (DBS) is one of several divisions housed within the Department of Education (DOE).¹⁷ The DBS must be designed for the purpose of ensuring the greatest possible efficiency and effectiveness of services to individuals who are blind.¹⁸ It is the intent of the Legislature to establish a coordinated program of services which are available to such individuals throughout Florida.¹⁹ The program must be designed to maximize employment opportunities for individuals who are blind and to increase their independence and self-sufficiency.²⁰

Direct-Support Organization for the Division of Blind Services

In 2004, the Legislature authorized the DBS to organize and incorporate a direct-support organization for the benefit of blind persons by raising funds; requesting and receiving grants, gifts, and bequests of moneys; and making expenditures.²¹

The DBS has established the Blind Services Foundation of Florida, Inc. (Blind Services Foundation) as its direct-support organization. The Blind Services Foundation has eight board members who are self-appointed according to the established bylaws²² and one ex-officio board member who also serves as the director of the DBS.²³

¹³ Section 215.981(1), F.S.

¹⁴ Section 11.45(3), F.S.

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

¹⁶ Section 112.3251, F.S.

¹⁷ Section 20.15(3)(e), F.S.

¹⁸ Section 413.011(3), F.S.

¹⁹ *Id.* at (2), F.S.

²⁰ *Id.*; See Florida Division of Blind Services, *Frequently Asked Questions*, <http://dbs.myflorida.com/Frequently%20Asked%20Questions/index.html> (last visited March 20, 2017).

²¹ Section 12, ch. 2004-331, L.O.F., *codified as* s. 413.0111, F.S.

²² Email, Blind Services Foundation of Florida, Inc. (Oct. 12, 2016). The by-laws were adopted December 2004; subsequently revised and adopted March 6, 2013. *Id.*

²³ Section 413.0111(2)(b) and (c), F.S.; Blind Services Foundation of Florida, Inc. *Board of Directors*, <http://www.blindservicesfoundation.org/board-of-directors.html> (last visited March 20, 2017).

The purposes and objectives of the Blind Services Foundation must be consistent with the priority issues and objectives of the DOE and must be in the best interests of the state.²⁴ Funds designated for the DSO must be used for the enhancement of programs and projects of the DBS.²⁵

The DSO is scheduled to repeal on October 1, 2017. If repealed, the Blind Services Foundation will no longer exist statutorily, and the DBS will no longer have the statutory authority to organize and incorporate a direct-support organization.²⁶ Upon dissolution of the Blind Services Foundation, all Blind Services Foundation properties revert to the DBS.²⁷

According to the DBS, repeal of the Blind Services Foundation may impact certain initiatives including, but not limited to, the following:

- Providing additional funding for children’s services, education projects, public education and awareness, and the establishment of an endowment for blind students at Miami-Dade College.²⁸
- Creating a series of informational and demonstrative sessions that highlight the capabilities of people who are blind.²⁹ This initiative gives personal accounts and demonstrates employment, personal, and socially geared technology that allows blind people to be included and functional in Florida.³⁰ This initiative has been presented to public schools, the Department of Education employees, a variety of colleges, and at other appropriate venues throughout the state.³¹

Additionally, twenty percent of the proceeds from the sale of the “Bikers Care” specialty motorcycle tag is distributed to the Blind Services Foundation.³²

Legislative Review: Findings and Recommendations for the Division of Blind Services

Senate professional staff reviewed documents related to the Blind Services Foundation for compliance with the authorizing and accountability statutes. Findings and recommendations are summarized below.

Blind Services Foundation’s Compliance under Authorizing Statute

The Blind Services Foundation:³³

²⁴ Section 412.0111(3), F.S.

²⁵ Section 413.0111(4), F.S.

²⁶ Section 413.0111(2)(a), F.S.

²⁷ *Id.* at (2)(e).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Email, Florida Department of Education (Feb. 3, 2017).

³³ Section 413.0111, F.S.

- Must be incorporated as a not-for-profit corporation under law, which requires initial filing of articles of incorporation and subsequent filing of sworn annual reports with the Department of State.³⁴
- Is subject to the public meetings and public records requirements established in statute.³⁵
- Is required to maintain donations and direct service expenditures in a bank account outside of the State Treasury.³⁶
- Is required to pay any administrative costs with private funds, and use designated funds for enhancing programs and projects for the DBS.
- Must have purposes and objectives consistent with the priorities and objectives of the DBS.³⁷
- Must comply with law, which requires each DSO and CSO with annual expenditures in excess of \$100,000 to annually provide an independent financial audit.³⁸

The Blind Services Foundation appears to comply with the authorizing statutory requirements.

The Blind Services Foundation's Compliance under Accountability Statute

- Each DSO is required by law to annually provide specified information to the appropriate agency by August 1 of each year.³⁹
 - **Finding:** The Foundation provided the required information to the DBS by the statutory deadline.⁴⁰ However, the Blind Services Foundation's code of ethics did not initially appear to fully comply with the standards and disclosures required by law.⁴¹ Subsequently, the the Blind Services Foundation revised the code of ethics and appears to comply with the statutory requirements.
- By August 15 of each year agencies must submit an annual report containing information from the DSO or CSO, with a recommendation for continuing, terminating, or modifying the agency's association with the DSO or CSO, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and OPPAGA.⁴²
 - **Finding:** The DOE provided hard copies of the reports to the Governor, the President of the Senate, the Speaker of the House of Representatives, and OPPAGA by the statutory deadline.⁴³
- Each agency must make the information received from each DSO or CSO available to the public through the agency's website.⁴⁴ If the DSO or CSO maintains its own website, the agency must provide a link on its website to the DSO's or CSO's website.⁴⁵

³⁴ Sections 413.0111(1) and (2)(a), F.S. Not-for-profit corporations are incorporated under Chapter 617, F.S. Articles of Incorporation are required by s. 617.0202, F.S., and annual reports are required by s. 617.1622, F.S.

³⁵ Section 413.0111(2)(d), F.S. See also s. 24, Art. I of the State Constitution, chapter 119, F.S., and s. 286.011, F.S.

³⁶ Section 413.0111(2)(f), F.S.

³⁷ *Id.* at (3).

³⁸ Section 215.981(1), F.S.

³⁹ Section 20.058(1), F.S. See pg. 2 of this analysis for the specific information required (e.g., name, statutory authority, brief description of the mission and fiscal plans, code of ethics, etc.).

⁴⁰ Email, Florida Department of Education (Nov. 15, 2016).

⁴¹ See, ss. 112.3251, 112.313 and 112.3143(2), F.S.

⁴² Section 20.058(3), F.S.

⁴³ Email, Florida Department of Education (Jan. 11, 2017).

⁴⁴ Section 20.058(2), F.S.

⁴⁵ *Id.*

- **Finding:** The required annual report has been posted to Florida’s Fiscal Portal.⁴⁶ A link to the Florida Fiscal Portal is on the DOE’s website.⁴⁷ The DBS’s website contains a link to the Blind Services Foundation’s website.
- Any contract between an agency and a DSO or CSO must be contingent upon the DSO or CSO’s submission and posting of the required information.⁴⁸ If the DSO or CSO fails to submit the required information for two consecutive years, the agency head must terminate the contract.⁴⁹
 - **Finding:** There is not a current contract between the DBS and the Blind Services Foundation.⁵⁰
 - **Recommendation:** The DBS and the Blind Services Foundation should consider entering a formal contract.

III. Effect of Proposed Changes:

CS/SB 1458 removes the scheduled repeal date for the Blind Services Foundation of Florida, Inc., which serves as the direct-support organization for the Division of Blind Services.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴⁶ Email, Florida Department of Education (Jan. 11, 2017). Florida Fiscal Portal, Department of Education’s 2014-2015 Annual Report on Citizen-Support and Direct-Support Organizations (8/5/14), available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=10642&DocType=PDF>, at 4; Florida Fiscal Portal, Department of Education’s 2015-2016 Annual Report on Citizen-Support and Direct-Support Organizations (8/1/15), available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=13513&DocType=PDF>, at 5; Florida Fiscal Portal, Department of Education’s 2016-2017 Annual Report on Citizen-Support and Direct-Support Organizations (8/1/16), available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=14514&DocType=PDF>, at 5.

⁴⁷ Email, Florida Department of Education (Jan. 13, 2017).

⁴⁸ Section 20.058(4), F.S.

⁴⁹ *Id.*

⁵⁰ Email, Florida Department of Education (Jan. 13, 2017). The Foundation operates similarly to the Department of Education’s direct-support organization and the Florida College System direct-support organization, which also do not have contracts. *Id.* Additionally, the Foundation’s board elects to have their funds disbursed directly to the Division. *Id.*

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The Blind Services Foundation of Florida, Inc. (Blind Services Foundation) allocates approximately \$50,000 each year to support a specific project that the Foundation's Board agrees is appropriate.⁵¹ Over the last five years, the Foundation has supported initiatives that provide additional funding for children's services, education projects, public education and awareness, and the establishment of an endowment for blind students at Miami-Dade College.⁵² Without the Blind Services Foundation, these initiatives may need to seek other sources of funding.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 413.0111 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Education on March 21, 2017:

The committee substitute removes from the bill provisions related to the Florida Endowment Foundation for Vocational Rehabilitation, which is the direct-support organization of the Division of Vocational Rehabilitation.

B. Amendments:

None.

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

⁵¹ Email, Florida Department of Education (Feb. 11, 2017).

⁵² *Id.*