

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 845 Direct-support Organization for the Florida Prepaid Tuition Scholarship Program  
**SPONSOR(S):** Mariano  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 896

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Post-Secondary Education Subcommittee	11 Y, 0 N	McAlarney	Bishop
2) Higher Education Appropriations Subcommittee	12 Y, 0 N	Butler	Lloyd
3) Education Committee			

### SUMMARY ANALYSIS

Direct-support organizations (DSO) 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. The functions and purpose of a DSO is prescribed by its enacting statute and also, for most, by a written contract with the agency the DSO was created to support. In 2014, the Legislature passed a bill that required DSOs statutory authority to be repealed, unless reviewed and saved from repeal by the Legislature.

The Florida Prepaid College Foundation, Inc. (Florida Prepaid) DSO is a not-for-profit corporation authorized by the Florida Legislature in 1989. Its purpose is to give students the opportunity to build a better future for themselves and the state by providing college scholarships funded through partnerships with individuals, businesses, educational foundations, and the Florida Legislature.

Historically, the Florida Legislature has provided state matching funds on a dollar for dollar basis for the Florida Prepaid Tuition Scholarship Program, also known as Project STARS (Scholarship Tuition for At-Risk Students), administered by the Florida Prepaid. Funds are used to purchase prepaid tuition contracts for children from low-income families who are at risk of dropping out of school. The current appropriation in Fiscal Year 2016-2017 is \$7.0 million. Changes in the bill do not require an increased appropriation.

The statutory authority for the Florida Prepaid DSO is scheduled for repeal on October 1, 2017, unless reviewed and saved from repeal by the Legislature.

This bill amends s. 1009.983(9), F.S., saving from repeal the Florida Prepaid DSO.

This bill has an effective date of July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Direct-Support Organizations

Direct-support organizations (DSO) 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. The functions and purpose of a DSO is prescribed by its enacting statute and also, for most, by a written contract with the agency the DSO was created to support.

Prior to 2014, there was no formal review process in law to determine whether a DSO was established pursuant to such authorization, or whether the rationale for the authorization remained applicable.

Chapter 2014-96, Laws of Florida<sup>1</sup> established reporting and transparency requirements for each DSO that is created or authorized pursuant to law or executive order and created, approved or administered by a state agency. The DSO must report information related to its organization, mission, and finances to the agency it was created to support by August 1 of each year.<sup>2</sup> Specifically, a DSO must provide:<sup>3</sup>

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the 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).

Each agency receiving the above information from a DSO must make the information available to the public through the agency's website. If the DSO maintains a website, the agency's website must provide a link to the DSO's website.<sup>4</sup> Additionally, any contract between an agency and a DSO must be contingent upon the DSO's submission and posting of this information.<sup>5</sup> If a DSO fails to submit the required information for two consecutive years, the agency is required to terminate the contract between the agency and the DSO.<sup>6</sup>

By August 15 of each year, each agency must report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the information provided by the DSO. The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency's association with each organization.<sup>7</sup>

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<sup>1</sup> Section 20.058, F.S.

<sup>2</sup> Section 20.058(1), F.S.

<sup>3</sup> Section 20.058(1)(a)-(f), F.S.

<sup>4</sup> Section 20.058(2), F.S.

<sup>5</sup> Section 20.058(4), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Section 20.058(3), F.S.

Lastly, a law creating, or authorizing the creation of, a DSO must state that the creation of or authorization for the DSO is repealed on October 1 of the 5th year after enactment, unless reviewed and saved from repeal through reenactment by the Legislature. DSOs in existence on July 1, 2014, must be reviewed by the Legislature by July 1, 2019.

### **DSO Audit Requirements**

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 nine months after the end of the fiscal year to the Auditor General and to the state agency responsible for its creation, administration, or approval.<sup>8</sup>

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 DSO's accounts and records.<sup>9</sup> The Auditor General is authorized to require and receive any records from the DSO, or from its independent auditor.<sup>10</sup>

### **DSO Ethics Code Requirements**

Section 112.3251, F.S., requires a DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in s. 112.313, F.S. and s. 112.3143(2), F.S. A DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.<sup>11</sup>

### **Florida Prepaid Tuition Scholarship Program**

The Florida Prepaid Tuition Scholarship Program was established to provide economically disadvantaged youth with prepaid postsecondary tuition scholarships. The DSO works with the Department of Education (DOE)<sup>12</sup> to:

1. Provide an incentive for economically disadvantaged youth to improve school attendance and academic performance in order to graduate and pursue a postsecondary education;<sup>13</sup>
2. Obtain the commitment and involvement of private sector entities by virtue of funding matches with a ratio of 50 percent provided by the private sector and 50 percent provided by the state,<sup>14</sup> and
3. Purchase prepaid tuition scholarships for students certified by the DOE as meeting minimum economic and school requirements and remain drug free and crime free.<sup>15</sup>

### **Florida Prepaid College Foundation, Inc.**

The Florida Prepaid College Foundation, Inc. (Florida Prepaid) DSO was created in 1989 as the DSO of the Florida Prepaid College Board. The Florida Prepaid DSO is focused on giving aspiring students the opportunity to build a better future for themselves and Florida by providing college scholarships funded through partnerships with individuals, businesses, educational foundations, and the Florida Legislature.<sup>16</sup>

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<sup>8</sup> Section 215.981, F.S.

<sup>9</sup> Section 11.45(3), F.S.

<sup>10</sup> Section 11.45(3) (d), F.S.

<sup>11</sup> Section 112.3251, F.S.

<sup>12</sup> Section 1009.984, F.S.

<sup>13</sup> *Id.* at (1).

<sup>14</sup> *Id.* at (2)

<sup>15</sup> *Id.* at (3).

<sup>16</sup> Florida Department of Education, *Annual Report to the Commissioner 2015-2016*,

<http://www.floridastudentfinancialaid.org/SSFAD/pdf/annualreportcurrent.pdf> (last visited Mar. 15, 2017).

The Florida Prepaid DSO administers the Florida Prepaid Tuition Scholarship Program pursuant to the provisions of s. 1009.984, F.S.<sup>17</sup>

The Florida Prepaid DSO provides businesses, community groups, and individuals the opportunity to fund tax-deductible college scholarships for Florida children. The donor may select the student and establish the scholarship criteria, subject to the DSO's approval.<sup>18</sup>

To fund these scholarships, the foundation receives an annual appropriation from the Florida Legislature<sup>19</sup> and funding from community partners including other foundations, school districts, businesses, organizations, and individuals. The foundation may provide matching funds or the partner may underwrite the entire scholarship. Contributions to the foundation may be tax-deductible.<sup>20</sup>

The Stanley Tate Project STARS (Scholarship Tuition for At-Risk Students) scholarship program, the DSO's most notable project, is a program for children from low-income families who are at risk of dropping out of school. Many of these children are the first in their families to have the opportunity to attend college. Students must maintain satisfactory academic progress and remain drug- and crime-free to receive a prepaid scholarship upon high school graduation. Since the Stanley Tate Project STARS scholarship program began, 32,546 scholarships have been awarded to low-income students at risk of dropping out of school, and who otherwise might not have had the opportunity to attend college.<sup>21</sup>

If the Florida Prepaid DSO is repealed, all properties revert to the Florida Prepaid College Board or to the state if the board ceases to exist.<sup>22</sup>

This section of law is repealed on October 1, 2017, unless reviewed and saved from repeal by the Legislature.<sup>23</sup>

The DSO has met the following statutory requirements:

**1. The DSO is required to incorporate as a Not-for-Profit Corporation (s. 1009.983(1)(a), F.S.; incorporated under the provisions of ch. 617)**

The DSO is listed as an active Florida Not-for-Profit Corporation with the Florida Division of Corporations. All annual reports have been filed going back to April 5, 1995. A copy of all annual reports is available online.<sup>24</sup>

**2. The DSO is required to be organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of the board. (s. 1009.983 (1)(b), F.S.)**

The DSO appears to be organized and operated in this manner and has met this requirement.<sup>25</sup>

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<sup>17</sup> Section 1009.983(8)(a), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> The Fiscal Year 2016-17 General Appropriation Act provides \$7.0 million. Specific Appropriation 67, Chapter 2015-232, Laws of Florida (Senate Bill 2500-A, General Appropriations Act)

<sup>20</sup> Section 1009.983(8)(a), F.S.

<sup>21</sup> <https://www.floridaprepaidcollegefoundation.com/about.aspx>

<sup>22</sup> Section 1009.983 (2) (d), F.S.

<sup>23</sup> Section 1009.983 (9), F.S.

<sup>24</sup> Florida Division of Corporations, *Search Records, Detail by Entity Name*,

<http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=FLORIDAPREPAIDCOLLEGEFOUNDATIO%20N353070&aggregateId=domnp-n35307-f4bbb7a4-2964-48c1-91c1-0462741579f9&searchTerm=Florida%20Prepaid%20College%20Foundation&listNameOrder=FLORIDAPREPAIDCOLLEGEFOUNDATIO%20N353070> (last visited Mar. 15, 2017)

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**3. The DSO is required to be operating in a manner consistent with the goals of the board and in the best interests of the state. (s. 1009.983(1)(c), F.S.)**

The DSO appears to have met this requirement.<sup>26</sup> The DSO has committed to giving aspiring students the opportunity to build a better future for themselves and our state by providing college scholarships funded through partnerships with individuals, businesses, educational foundations and the Florida Legislature. The Stanley Tate Project STARS (Scholarship Tuition for At-Risk Students) scholarship program is the Foundation's hallmark program and annually receives an appropriation from the Legislature which is then matched with local organizations such as Take Stock in Children, and Education Foundations.

Since the Stanley Tate Project STARS scholarship program began, 32,546 scholarships have been awarded to low-income students at risk of dropping out of school, and who otherwise might not have had the opportunity to attend college. Annually the DSO supports approximately 50 local 501(c)(3) organizations from around the state to purchase approximately 1,500 scholarships for students in their community. Many of these students would not otherwise have the opportunity to go to college and all are required to meet with a mentor, meet academic standards, and graduate from high school.<sup>27</sup>

During Fiscal Year 2015-2016, the DSO received more than \$20,000,000 in contributions to purchase scholarships, including the annual appropriation of \$7,000,000 for Project STARS. In addition, the Foundation had revenues in the amount of more than \$143,000 and expenses totaling more than \$253,000.<sup>28</sup>

**4. For each year the DSO's expenditures exceed \$100,000, it must provide for an annual financial audit and submit the audit to the Auditor General within nine months after the end of the fiscal year (s. 1009.983(3), F.S.)**

The DSO has met this requirement. Each year the DSO is audited by an independent auditor. Annual audits from 2010 – 2016 are posted on their website.<sup>29</sup>

### **Effect of Proposed Changes**

This bill changes the repeal date from October 1, 2017 to October 1, 2022. This enables the DSO to remain in existence until 2022, allowing it to continue providing scholarships and services to Florida's students and parents, at which time it will have to be reviewed and saved from repeal by the Legislature.

### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 1009.983(9) F.S., to change the date of repeal to from October 1, 2017 to October 1, 2022, saving from repeal the Florida Prepaid Foundation of Florida, Inc., the direct-support organization of the Florida Prepaid College Board.

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<sup>25</sup> Florida Prepaid College Foundation, *About the Foundation*, <https://www.floridaprepaidcollegefoundation.com/about.aspx> (last visited Mar. 21, 2017)

<sup>26</sup> Florida Prepaid College Foundation, *Annual Report 2015, Foundation Facts*, p. 2, [http://www.itppv.com/documents/pdf/foundation\\_2015\\_annual\\_report\\_web.pdf](http://www.itppv.com/documents/pdf/foundation_2015_annual_report_web.pdf) (last visited Mar. 1, 2017).

<sup>27</sup> Email from Casey Fisher, Foundation Manager, Florida Prepaid College Foundation, RE: Talking Points for the DSO Extension, answering a question from Representative Amber Mariano's Legislative Assistant Lisa Kauffman regarding how the DSO uses state dollars related to the DSO's mission and how much money flows through the DSO (Mar. 7, 2017).

<sup>28</sup> *Id.*

<sup>29</sup> Florida Prepaid College Foundation, *Financial Statements*, <https://www.floridaprepaidcollegefoundation.com/about-financial-statements.aspx> (last visited Mar. 15, 2017).

**Section 2.** Provides an effective date of July 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Extending the life of the direct service organization will allow Florida Prepaid to continue accepting donations and providing scholarships to at-risk students.

### D. FISCAL COMMENTS:

Historically, the Florida Legislature has provided state matching funds on a dollar for dollar basis for the Florida Prepaid Tuition Scholarship Program, also known as Project STARS (Scholarship Tuition for At-Risk Students), administered by the Florida Prepaid. Funds are used to purchase prepaid tuition contracts for children from low-income families who are at risk of dropping out of school. The current appropriation in Fiscal Year 2016-2017 is \$7.0 million. Changes in the bill do not require an increased appropriation.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.