

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: PCS/CS/SB 896 (188282)

INTRODUCER: Appropriations Subcommittee on Higher Education; Education Committee and Senator Simmons

SUBJECT: Direct-support Organization for the Florida Prepaid College Board

DATE: April 13, 2017

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

PCS/CS/SB 896 modifies the financial interest disclosure requirement for certain members of the Florida Prepaid College Board and extends the repeal date for the Florida Prepaid College Board's direct-support organization from October 1, 2017 to October 1, 2022.

This bill has no impact on state funds.

The bill takes effect July 1, 2017

II. Present Situation:

Citizen-Support Organizations and Direct-Support Organizations

Citizen-support organizations (CSOs) and direct-support organization (DSOs) are statutorily created entities that are generally required to be non-profit organizations¹ and are authorized to carry out specific tasks in support of public entities or public causes. The functions and purpose

¹ Chapter 617, F.S.

of a CSO or DSO are prescribed by its enacting statute and for most part, by a written contract with the agency the CSO or DSO was created to support.²

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 by August 1, the following information to the appropriate agency: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 ethics code; and
- A copy of the organization's most recent Internal Revenue Service (IRS) Form 990.⁵

Each agency receiving CSO- or DSO-reported information must make that 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 the required information to the agency and posting such information 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

Annually, by August 15, 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 (OPPAGA) 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

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

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 (1)(d) available at http://www.myflorida.com/audgen/pages/pdf_files/10_700.pdf.

³ Chapter 2014-96, L.O.F, effective upon becoming a law (e.g., June 13, 2014).

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).

CSO and DSO Audit Requirements

Section 215.981, F.S., requires each CSO and DSO, created or authorized pursuant to law, with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.¹² An independent certified public accountant in accordance with rules adopted by the Auditor General must conduct the audit. 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 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 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 conspicuously post its ethics code on its website.¹⁶

Florida Prepaid College Board

The Florida Prepaid College Board (Board) administers the Stanley G. Tate Florida Prepaid College Program (prepaid program) and the Florida College Savings Program (savings program), and performs specified essential governmental functions.¹⁷

Financial Disclosure

Each member of the Board is required to file a Full and Public Disclosure Financial Interests (Form 6), which is the same disclosure required of all elected constitutional officers and candidates for such office.¹⁸

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.

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 1009.971(1), F.S. See ss. 1009.97-1009.988, F.S. The Board is assigned to and administratively housed within the State Board of Administration, but it independently exercises specified powers and duties. *Id.* The Board consists of seven members, composed of the Attorney General, the Chief Financial Officer, the Chancellor of the State University System, the Chancellor of the Division of Florida Colleges, and three members appointed by the Governor and subject to confirmation by the Senate. *Id.* at 2.

¹⁸ Section 1009.971(2), F.S.

Stanley G. Tate Florida Prepaid College Foundation

In 1990, the Legislature authorized the Board to establish a DSO.¹⁹ The Board subsequently established the Stanley G. Tate Florida Prepaid College Foundation (Foundation) to provide scholarships to students who may not have otherwise had the opportunity to go to college.²⁰

The Foundation administers the Florida Prepaid Tuition Scholarship Program (Scholarship Tuition for At-Risk Students, or STARS Program).²¹ This program provides economically disadvantaged youth with prepaid postsecondary tuition scholarships.²²

The Foundation has established additional scholarship programs, with Board approval, which include the Black History Month Scholarship, Hispanic Heritage Month Scholarship, and National Mortgage Settlement Dormitory Project.²³

Legislative Review: Findings and Recommendations

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

Foundation's Compliance under Authorizing Statute

The Foundation:²⁴

- 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.²⁵
- Must be organized exclusively to receive, hold, invest, and administer property and to make expenditures on behalf of the board.
- Must be certified by the Board as operating in a manner consistent with the goals of the board and in the best interest of the state.
- Is subject to the public meetings and public records requirements in law.²⁶
- Must comply with state law, which requires each DSO and CSO with annual expenditures in excess of \$100,000 to provide annually for an independent financial audit.²⁷

The Foundation appears to comply with the authorizing statutory requirements.

¹⁹ Section 1009.983(1), F.S.; Stanley G. Tate Florida Prepaid College Foundation, *2015 Annual Report*, available at http://www.itppv.com/documents/pdf/foundation_2015_annual_report_web.pdf, at 1.

²⁰ Stanley G. Tate Florida Prepaid College Foundation, *2015 Annual Report*, available at http://www.itppv.com/documents/pdf/foundation_2015_annual_report_web.pdf, at 3.

²¹ Sections 1009.983(8), 1009.984, F.S.; Stanley G. Tate Florida Prepaid College Foundation, *2015 Annual Report*, available at http://www.itppv.com/documents/pdf/foundation_2015_annual_report_web.pdf, at 4.

²² Section 1009.984, F.S.

²³ Stanley G. Tate Florida Prepaid College Foundation, *2015 Annual Report*, available at http://www.itppv.com/documents/pdf/foundation_2015_annual_report_web.pdf, at 13-14.

²⁴ Section 1009.983, F.S.

²⁵ *Id.* at (1)(a). 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.

²⁶ Section 1009.983(4), F.S. See also s. 24, Art. I of the State Constitution, ch. 119, F.S., and s. 286.011, F.S.

²⁷ Section 215.981, F.S.

Foundation's Compliance under Accountability Statute

- Each DSO is required to annually provide to the appropriate agency specified information by August 1.²⁸
 - **Finding:** The Foundation appears to have provided the required information to the Board by the statutory deadline.²⁹
- Each agency must submit an annual report by August 15 of each year with the information received from the DSO or CSO, which contains a recommendation for continuing, terminating, or modifying the agency's association with the DSO or CSO, and the rationale for doing so.³⁰
 - **Finding:** The Board appears to have submitted its annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and OPPAGA, along with the Board's recommendation and rationale for continuing the Foundation as required by law by the statutory deadline.³¹
- Each agency must make the information received from each DSO or CSO available to the public through the agency's website.³² 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.³³
 - **Finding:** The Board appears to have complied with the statutory requirements.³⁴
- Any contracts between an agency and a DSO or CSO must be contingent upon the DSO or CSO's submission and posting of the required information.³⁵ If the DSO or CSO fails to submit the required information for two consecutive years, the agency head must terminate the contract.³⁶
 - **Finding:** The contract between the Board and Foundation, effective December 9, 2016 through December 9, 2021, contains the language necessary for compliance with current law. However, the executed contract contains an error concerning the relevant statutory reference to the DSO accountability statute.³⁷
 - **Recommendation:** The Board should amend its contract with the Foundation to reflect the proper statutory reference.³⁸

III. Effect of Proposed Changes:

The bill modifies the financial interest disclosure requirement for certain members of the Florida Prepaid College Board and extends the repeal date for the Florida Prepaid College Board's direct-support organization (DSO) from October 1, 2017 to October 1, 2022.

²⁸ Section 20.058(1), F.S. See pg. 2 of this analysis.

²⁹ Email, The Stanley G. Tate Florida Prepaid Foundation (Oct. 6, 2016). Email, The Stanley G. Tate Florida Prepaid Foundation (Oct. 19, 2016).

³⁰ Section 20.058(3), F.S.

³¹ Email, The Stanley G. Tate Florida Prepaid Foundation (Oct. 6, 2016).

³² Section 20.058(2), F.S.

³³ *Id.*

³⁴ Florida Prepaid College Board, *Board Reports & Plans*, <http://www.myfloridaprepaid.com/who-we-are/about-the-board/board-reports-and-plans/> (last visited March 20, 2017).

³⁵ Section 20.058(4), F.S.

³⁶ *Id.*

³⁷ Email, The Stanley G. Tate Florida Prepaid Foundation (March 15, 2017). Foundation staff reported that they intend to amend the contract with the Florida College Prepaid Board to include the proper statutory reference. *Id.*

³⁸ Email, The Stanley G. Tate Florida Prepaid Foundation (Feb. 24, 2017).

Section 1 modifies the financial interest disclosure requirement to specify that certain members of the Florida Prepaid College Board (e.g., Chancellor of the State University System and Chancellor of the Florida College System or an individual appointed by the Governor who is not a constitutional officer) must file the Statement of Financial Interest (Form 1) rather than the currently required Full and Public Disclosure of Financial Interests (Form 6). This is consistent with the requirement for members of other similar boards.³⁹

Section 2 extends the repeal date of the DSO to October 1, 2022. This extension allows for the continuation of the Florida Prepaid Tuition Scholarship Program (Scholarship Tuition for At-Risk Students, or STARS Program) and other scholarship programs for Florida students, which include, but are not limited to, the Black History Month Scholarship, Hispanic Heritage Month Scholarship, and National Mortgage Settlement Dormitory Project Scholarship.⁴⁰

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Florida Prepaid College Foundation (Foundation) has awarded more than 42,000 college scholarships since its inception.⁴¹ More than 23,000 students have attended college using scholarship benefits awarded by the Foundation.⁴²

³⁹ Section 112.3145(1)(a), F.S.

⁴⁰ The Stanley G. Tate Florida Prepaid Foundation, *2017 Agency Legislative Bill Analysis for SB 896* (March 7, 2017), at 1.

⁴¹ The Stanley G. Tate Florida Prepaid Foundation, *2017 Agency Legislative Bill Analysis for SB 896* (March 7, 2017), at (1).

⁴² *Id.* at (2).

C. Government Sector Impact:

This bill has no direct impact on state revenues or expenditures. As background, the Legislature appropriated \$7 million to support the Florida Prepaid Tuition Scholarship Program, administered by the Foundation, in the 2016-2017 General Appropriation Act.⁴³ SB 2500, the Senate General Appropriations Act for the 2017-2018 Fiscal Year, also appropriates \$7 million for the Florida Prepaid Tuition Scholarship Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1009.971 and 1009.983.

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

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

Recommended CS/CS by Appropriations Subcommittee on Higher Education on April 13, 2017:

The committee substitute modifies the financial interest disclosure requirement to specify that certain members of the Florida Prepaid College Board (e.g., Chancellor of the State University System and Chancellor of the Florida College System or an individual appointed by the Governor who is not a constitutional officer) must file the Statement of Financial Interest (Form 1) rather than the currently required Full and Public Disclosure of Financial Interests (Form 6).

CS by Education on March 21, 2017:

The committee substitute corrects the enacting clause to reflect the statutory name of the Florida Prepaid College Board.

B. Amendments:

None.

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

⁴³ Specific appropriation 71, s. 2, ch. 2016-66, L.O.F