

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** SB 1552 Direct-support Organization for the Florida Prepaid College Board

**SPONSOR(S):** Gruters

**TIED BILLS:** None **IDEN./SIM. BILLS:** None

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**FINAL HOUSE FLOOR ACTION:** 113 Y's 0 N's **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

SB 1552 passed the Senate on February 23, 2022, and subsequently passed the House on March 4, 2022.

The bill removes the scheduled repeal of the Stanley G. Tate Florida Prepaid College Foundation, Inc., which is a direct-support organization for the Florida Prepaid College Board created to administer the Florida Prepaid Tuition Scholarship Program and other scholarship programs approved by the Florida Prepaid College Board.

The bill was approved by the Governor on April 6, 2022, ch. 2022-38, L.O. F., and will become effective on July 1, 2022.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### Current Situation

#### **Citizen Support Organizations and Direct-Support Organizations**

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily created private 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 CSO or DSO are prescribed by its enacting statute and, for most, by a written contract with the agency the CSO or DSO was created to support.

#### ***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 that are created or authorized pursuant to law or executive order and created, approved, or administered by a state agency.<sup>1</sup> Specifically, the law requires each CSO and DSO to annually submit, by August 1, the following information related to its organization, mission, and finances to the agency it supports:<sup>2</sup>

- 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 federal Internal Revenue Service (IRS) Return of Organization Exempt from Income Tax form (Form 990).<sup>3</sup>

Each agency receiving the above information must make the information available to the public through the agency's website. If the CSO or DSO maintains a website, the agency's website must provide a link to the website of the CSO or DSO.<sup>4</sup> Additionally, any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting and posting the information.<sup>5</sup> If a CSO or DSO fails to submit the required information for two consecutive years, the agency must terminate the contract with the CSO or DSO.<sup>6</sup> The contract must also include a provision for ending operations and returning state-issued funds to the state if the authorizing statute is repealed, the contract is terminated, or the organization is dissolved.<sup>7</sup>

By August 15 of each year, the 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 (OPPAGA) the information provided by the CSO or 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 CSO or DSO.<sup>8</sup>

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<sup>1</sup> Chapter 2014-96, L.O.F.

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

<sup>3</sup> 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.

<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> *Id.*

<sup>8</sup> Section 20.058(3), F.S.

Lastly, a law creating or authorizing the creation of a CSO or DSO must state that the creation or authorization for the CSO or DSO is repealed on October 1 of the fifth year after enactment, unless reviewed and saved from repeal by the Legislature.

### ***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.<sup>9</sup> The audit must 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 the CSO or DSO supports.

Additionally, the Auditor General may conduct audits or other engagements of the accounts and records of the CSO or DSO, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee.<sup>10</sup> The Auditor General is authorized to require and receive any records from the CSO or DSO, or its independent auditor.<sup>11</sup>

### ***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. A CSO or 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>12</sup>

### ***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 other specified essential governmental functions.<sup>13</sup>

### ***Stanley G. Tate Florida Prepaid College Foundation***

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<sup>9</sup> 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 schoolboard. 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.

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

<sup>11</sup> *Id.*

<sup>12</sup> Section 112.3251, F.S.

<sup>13</sup> Section 1009.971(1), F.S. See also 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. 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. Section 1009.971(1) and (2), F.S.

In 1989, the Legislature authorized the Board to establish a DSO.<sup>14</sup> The Board established the Florida Prepaid College Foundation, Inc.,<sup>15</sup> (Foundation) in 1990 as a public/private partnership to provide scholarships to students who may not have otherwise had the opportunity to go to college.<sup>16</sup> The Foundation administers the Florida Prepaid Tuition Scholarship Program (Scholarship Tuition for At-Risk Students, or STARS Program).<sup>17</sup> This program provides economically disadvantaged youth with prepaid postsecondary tuition scholarships.<sup>18</sup> The Foundation has established additional scholarship programs, which include the Black History Month Scholarship and the Hispanic Heritage Month Scholarship.<sup>19</sup>

The Board is required to certify that the Foundation operates in a manner consistent with the goals of the Board and in the best interest of the state.<sup>20</sup> The Foundation is required to be:<sup>21</sup>

- A Florida not-for-profit corporation registered, incorporated, organized, and operated in compliance with chapter 617.
- Organized exclusively to receive, hold, invest, and administer property and to make expenditures on behalf of the board.

The Foundation has awarded more than 51,000 Florida Prepaid College Plan scholarships, and more than 32,600 Foundation scholarship recipients have gone to college using their benefits.<sup>22</sup> The STARS Program remains the Foundation's largest initiative, representing 80 percent of the scholarships purchased by the Foundation.<sup>23</sup>

## Legislative Review: Findings and Recommendations

Senate and House professional staff reviewed documents related to the Foundation for compliance with accountability and authorizing statutes. The Foundation appears to be in compliance with such statutes. Findings and recommendations are summarized below.

## The Foundation's Compliance with Accountability Requirements

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<sup>14</sup> Section 1, ch. 89-316, L.O.F.

<sup>15</sup> The Foundation was renamed the Stanley G. Tate Florida Prepaid College Foundation, Inc., in 2012. See Florida Prepaid College Foundation, *Amendment and Name Change* (2012), available at <http://search.sunbiz.org/Inquiry/CorporationSearch/ByName> (search for "Florida Prepaid College Foundation", then follow "Florida Prepaid College Foundation, Inc." hyperlink).

<sup>16</sup> Stanley G. Tate Florida Prepaid College Foundation, *2020 Annual Report*, available at <https://www.floridaprepaidcollegefoundation.com/wp-content/uploads/2021/06/2020-Florida-Prepaid-College-Foundation-Annual-Report-Digital.pdf>, at 6.

<sup>17</sup> Sections 1009.983(8), 1009.984, F.S.; Stanley G. Tate Florida Prepaid College Foundation, *2020 Annual Report*, available at <https://www.floridaprepaidcollegefoundation.com/wp-content/uploads/2021/06/2020-Florida-Prepaid-College-Foundation-Annual-Report-Digital.pdf>, at 10.

<sup>18</sup> Section 1009.984, F.S.

<sup>19</sup> Stanley G. Tate Florida Prepaid College Foundation, *2020 Annual Report*, available at <https://www.floridaprepaidcollegefoundation.com/wp-content/uploads/2021/06/2020-Florida-Prepaid-College-Foundation-Annual-Report-Digital.pdf>, at 17.

<sup>20</sup> Section 1009.983(1)(c), F.S.

<sup>21</sup> Section 1009.983(1), F.S.

<sup>22</sup> Stanley G. Tate Florida Prepaid College Foundation, *2020 Annual Report*, available at <https://www.floridaprepaidcollegefoundation.com/wp-content/uploads/2021/06/2020-Florida-Prepaid-College-Foundation-Annual-Report-Digital.pdf>, at 4.

<sup>23</sup> *Id.*

- **Not-for-profit corporation** - The Foundation 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 each annual report is available online.<sup>24</sup>
- **Organized and operated exclusively to benefit the Board** - The by-laws of the Foundation confirm the Foundation is organized and operated exclusively for the benefit of the Board.<sup>25</sup>
- **Board chair as a director of Foundation** - The chair of the Board is also the chair of the Foundation.<sup>26</sup> The Foundation has confirmed that the Foundation complies with the requirement for the appointment of the Foundation's directors.<sup>27</sup>
- **Annually reporting requirement** – As required, the Foundation has submitted the following information to the Board:
  - The name, mailing address, telephone number, and website address of the Foundation.
  - The statutory authority or executive order pursuant to which the Foundation was created.
  - A brief description of the mission of, and results obtained by, the Foundation.
  - A brief description of the plans of the Foundation for the next 3 fiscal years.
  - A copy of the Foundation's code of ethics.
  - A copy of the Foundation's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).
    - The Internal Revenue Service has determined that the Foundation is exempt from the requirement of filing Form 990.<sup>28</sup>
- **Annual report available on Board's website** - The Board's website includes a link to the Foundation's website and includes the Foundation's required annual disclosure report.<sup>29</sup>
- **The Foundation has adopted code of ethics** - The ethics code adopted by the Foundation is included within the Foundation's annual required disclosure, which is published on the Foundation's website. The published code of ethics is the policy of the State Board of Administration but does not appear to address postemployment restrictions of personnel. As authorized by s. 1009.983(6), F.S., however, the Foundation operates solely through services provided by employees of the Board, who are subject as public officers or employees of agencies to the standards of conduct set forth in chapter 112, F.S. In the event the Foundation decides to employ its own personnel, the Foundation must ensure its ethics code satisfies the requirements as set forth in s. 112.3251, F.S.
- **Annual audit requirement** - Each year the Foundation is audited by an independent auditor. Annual audits from 2010 – 2020 are posted on the Foundation's website.<sup>30</sup> The Foundation has submitted the audits to the Auditor General<sup>31</sup> and the Board.<sup>32</sup>

<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=FLORIDAPREPAIDCOLLEGEFOUNDATION%20N353070&aggregateId=dommp-n35307-f4bbb7a4-2964-48c1-91c1-0462741579f9&searchTerm=Florida%20Prepaid%20College%20Foundation&listNameOrder=FLORIDAPREPAIDCOLLEGEFOUNDATION%20N353070> (last visited Mar. 11, 2022).

<sup>25</sup> Stanley G. Tate Florida Prepaid College Foundation, *By-Laws of the Florida Prepaid College Foundation, Inc.* (2020), at 2.

<sup>26</sup> See Florida Prepaid College Foundation, *Board Members*, <https://www.floridaprepaidcollegefoundation.com/about-us/board-members-staff/> (last visited Mar. 11, 2022), and Florida Prepaid College Board, *Florida Prepaid College Board Members*, <https://www.myfloridaprepaid.com/about-us/board-members/> (last visited Mar. 11, 2022).

<sup>27</sup> Email, Florida Prepaid College Board (Sept. 14, 2021).

<sup>28</sup> *Id.*, at 11.

<sup>29</sup> Florida Prepaid College Foundation, *Board Reports & Plans*, <https://www.myfloridaprepaid.com/about-us/board-reports/> (last visited Feb. 25, 2022).

<sup>30</sup> Stanley G. Tate Florida Prepaid College Foundation, *Financial Statements*, <https://www.floridaprepaidcollegefoundation.com/resources/news-publications-and-events/> (last visited Mar. 11, 2022).

<sup>31</sup> Florida Auditor General, *Stanley G. Tate Florida Prepaid College Foundation*, [https://flauditor.gov/pages/nonprofit\\_forprofit%20pages/stanley%20g%20tate%20florida%20prepaid%20college%20foundation.htm](https://flauditor.gov/pages/nonprofit_forprofit%20pages/stanley%20g%20tate%20florida%20prepaid%20college%20foundation.htm) (last visited Mar. 11, 2022).

<sup>32</sup> Florida Prepaid College Board, *Board Reports & Plans: Financial Statements* (2020), available at <https://www.myfloridaprepaid.com/wp-content/uploads/2020-Florida-Prepaid-College-Board-Financial-Statements.pdf> at 17.

- **Recommendation** – As required, Board provided the Foundation's required annual disclosure prior to the August 15 deadline.<sup>33</sup> In the required annual disclosure report, the Board recommended continued association with the Foundation.<sup>34</sup>
- **Contracting requirements** - The contract between the Board and the Foundation must be contingent upon the Foundation's submission and posting of information required to be submitted to the Board. The contract must also include a provision for the orderly cessation of operations and reversion to the state of state funds held in trust by the Foundation within 30 days after its authorizing statute is repealed, the contract is terminated, or the Foundation is dissolved. If the Foundation fails to submit the required information for two consecutive years, the Board chair must terminate any contract between the Board and the Foundation.<sup>35</sup>
- **Matching funds requirement** - The Foundation must administer the Florida Prepaid Tuition Scholarship Program and additional scholarship programs supported from escheated funds retained by the Board, provided that any matching funds for such scholarships are obtained solely from the private sector.<sup>36</sup> The Foundation administers additional scholarship programs with matching funds obtained solely from the private sector.<sup>37</sup>
- **Listing of additional scholarship programs** - The Foundation's annual report must include a list of any additional scholarship programs approved by the Board to be administered by the Foundation, including a description of the programs and the amount of escheated funds utilized to fund the programs.<sup>38</sup> The Foundation's *2020 Annual Report* describes additional scholarship programs approved by the Board and indicates the amount of escheated funds utilized to fund each program.<sup>39</sup>
- **Donor confidentiality** - The Foundation is required to keep confidential the identity of donors who desire to remain anonymous.<sup>40</sup> The Foundation confirms it maintains the anonymity of donors who desire to remain anonymous and is thus compliant with this requirement.<sup>41</sup>

## Effect of the Bill

The bill removes the scheduled repeal of the Stanley G. Tate Florida Prepaid College Foundation, Inc., which is a direct-support organization for the Florida Prepaid College Board created to administer the Florida Prepaid Tuition Scholarship Program and other scholarship programs approved by the Florida Prepaid College Board.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2022.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

<sup>33</sup> Email, Florida Prepaid College Board (Sept. 15, 2021).

<sup>34</sup> Florida Prepaid College Foundation, *Required Disclosure to s. 20.058, F.S.* (July 21, 2021), available at <https://www.floridaprepaidcollegefoundation.com/wp-content/uploads/2021/07/2021-Foundation-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.058-Florida-Statutes-1.pdf>, at 2.

<sup>35</sup> Section 20.058(4), F.S.

<sup>36</sup> Section 1009.983(8), F.S.

<sup>37</sup> Email, Florida Prepaid College Board (September 14, 2021).

<sup>38</sup> Section 1009.983(8)(b), F.S.

<sup>39</sup> Stanley G. Tate Florida Prepaid College Foundation, *2020 Annual Report*, available at <https://www.floridaprepaidcollegefoundation.com/wp-content/uploads/2021/06/2020-Florida-Prepaid-College-Foundation-Annual-Report-Digital.pdf>, at 17.

<sup>40</sup> Section 1009.983(4), F.S.

<sup>41</sup> Email, Florida Prepaid College Board (Sept. 14, 2021).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The Florida Prepaid College Foundation, Inc. (Foundation) has awarded more than 51,000 Florida Prepaid College Plan scholarships, and more than 32,600 Foundation scholarship recipients have gone to college using their benefits.<sup>42</sup> The continued operation of the Foundation may ensure that students continue to be awarded such scholarships.

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<sup>42</sup> Stanley G. Tate Florida Prepaid College Foundation, *2020 Annual Report*, available at <https://www.floridaprepaidcollegefoundation.com/wp-content/uploads/2021/06/2020-Florida-Prepaid-College-Foundation-Annual-Report-Digital.pdf>, at 8.