

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 Committee on Education

BILL: SB 890

INTRODUCER: Senator Bean

SUBJECT: Review of the Florida Endowment for Vocational Rehabilitation

DATE: March 20, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Benvenisty</u>	<u>Graf</u>	<u>ED</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AED</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 890 saves from future review and repeal the Florida Endowment Foundation for Vocational Rehabilitation (Foundation), which serves as the direct-support organization of the Division of Vocational Rehabilitation within the Florida Department of Education. Specifically, the bill deletes the Foundation’s October 1, 2017 repeal date.

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.² The functions and purpose of a CSO or DSO are prescribed by its enacting statute and also, for the most part, by a written contract with the agency the CSO or DSO was created to support.³

¹ Chapter 617, F.S.

² E.g., ss. 1009.983 and 413.0111, F.S.

³ 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.⁴ Specifically, the law requires each CSO and DSO to annually submit by August 1, the following information to the appropriate agency:⁵

- 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 990.⁶

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.⁷ If the organization maintains a website, the agency's website must provide a link to the organization's website.⁸ 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 the posting of such information as specified in law.⁹ 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.¹⁰

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 (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.¹¹

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 prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019.¹²

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.¹³ The audit must be conducted by an independent certified public accountant in

⁴ Section 3, ch. 2014-96, L.O.F

⁵ Section 20.058(1), F.S.

⁶ 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.

⁷ Section 20.058(2), F.S.

⁸ *Id.*

⁹ Section 20.058(4), F.S.

¹⁰ *Id.*

¹¹ *Id.* at (3).

¹² *Id.* at (5).

¹³ 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.

accordance with rules adopted by the 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.¹⁴ 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.¹⁵

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.¹⁶ 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.¹⁷

Division of Vocational Rehabilitation

The Division of Vocational Rehabilitation (Division) is one of several divisions housed within the Department of Education (DOE).¹⁸ The Division is the administrative unit designated at the state level that ensures compliance with the Vocational Rehabilitation Act of 1973, as amended.¹⁹ The Division's mission is "to help people with disabilities find and maintain employment and enhance their independence."²⁰ Vocational Rehabilitation (VR) is a federal-state program that helps people who have physical or mental disabilities find and maintain meaningful careers.²¹

Florida Endowment Foundation for Vocational Rehabilitation

In 1990, the Legislature created the Florida Endowment Foundation for Vocational Rehabilitation (Foundation or The Able Trust) as a direct-support organization of the Division of Vocational Rehabilitation (Division) within the DOE for the purpose of encouraging public and private support to enhance vocational rehabilitation and employment of citizens who are disabled.²²

The Foundation conducts business as The Able Trust,²³ which operates under contract with the Division to exclusively raise funds; submit requests and receive grants from the Federal Government, the state, private foundations, and individuals; to receive, hold, and administer

¹⁴ Section 215.981(1), F.S.

¹⁵ Section 11.45(3), F.S.

¹⁶ 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.

¹⁷ Section 112.3251, F.S.

¹⁸ Section 20.15(3)(d), F.S.

¹⁹ Section 413.202, F.S.

²⁰ Florida Division of Vocational Rehabilitation, <http://www.rehabworks.org/> (last visited March 20, 2017).

²¹ Florida Division of Vocational Rehabilitation, *Frequently Asked Questions*, <http://www.rehabworks.org/faq.shtml> (last visited March 20, 2017).

²² Section 9, ch. 90-330, L.O.F., codified as s. 413.615(5), F.S.

²³ The Able Trust is another name for the Foundation, essentially the trade name of the Foundation.²³ Email, Florida Department of Education (Feb. 2, 2017).

property; and to make expenditures to or for the benefit of the rehabilitation programs approved by the Foundation's board of directors.²⁴

During its 26 years, the Foundation has gone beyond the traditional direct-support organization role of supporting activities of the Division by developing and expanding statewide programs to move people with disabilities into the workforce.²⁵

Currently, the authorizing statute for the Foundation is scheduled for repeal October 1, 2017, unless reviewed and saved from repeal by the Legislature.²⁶

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:²⁷

- 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.²⁸
- Must be organized and operate exclusively for the benefit of the Rehabilitation programs approved by the Board of Directors of the Foundation.
- Must be approved by the Division to operate for the benefit and best interest of the state.
- Is subject to the public meetings and public records requirements in law.²⁹
- Must comply with law which requires each DSO and CSO with annual expenditures in excess of \$100,000 to provide annually for an independent financial audit.³⁰

The Foundation appears to comply with the authorizing statutory requirements.

Foundation's Compliance under Accountability Statute

- Each DSO is required to annually provide to the appropriate agency specified information by August 1.³¹
 - **Finding:** The Foundation appears to have provided the required information to the DOE by the statutory deadline.³²

²⁴ Section 413.615(5)(b), F.S.

²⁵ Email, Florida Department of Education (Feb. 2, 2017).

²⁶ Section 413.615(14), F.S.

²⁷ Section 413.615(5), F.S.

²⁸ Section 413.615(5)(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.

²⁹ Section 413.615(7), F.S. See also s. 24, Art. I of the State Constitution, ch. 119, F.S., and s. 286.011, F.S. Section 413.615(7), F.S. exempts certain information from public record and meetings laws.

³⁰ Section 215.981, F.S.

³¹ Section 20.058(1), F.S. See pg. 2 of this analysis.

³² Email, Florida Department of Education (Nov. 15, 2016); Florida Fiscal Portal, Department of Education's 2016-2017 Annual Report on Citizen-Support and Direct-Support Organizations, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=14514&DocType=PDF>, at 3-4.

- 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.³³
 - **Finding:** The DOE submitted its annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and OPPAGA, along with the DOE's recommendation and rationale for continuing the Foundation by the statutory deadline.³⁴
- Each agency must make the information received from each DSO or CSO available to the public through the agency's website.³⁵ 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.³⁶
 - **Finding:** The required annual report has been posted to Florida's Fiscal Portal.³⁷ A link to the Florida Fiscal Portal is available on the DOE's website.³⁸ However, a link to the Foundation's website is not found on either the DOE's or the Division's website.
 - **Recommendation:** The DOE or the Division should create a link on the DOE or the Division's website to the 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.³⁹ If the DSO or CSO fails to submit the required information for two consecutive years, the agency head must terminate the contract.⁴⁰
 - **Finding:** The Foundation appears to have submitted the required information for the last two consecutive years. However, neither the Foundation, nor the DOE or the Division, appear to have posted the information to its respective website as required.
 - **Recommendation:** Either the DOE or the Division, or the Foundation should post the statutorily required information to its respective website.

III. Effect of Proposed Changes:

SB 890 saves from future review and repeal the Florida Endowment Foundation for Vocational Rehabilitation (Foundation or The Able Trust), which is a direct-support organization of the Division of Vocational Rehabilitation (Division) within the Florida Department of Education. The authorizing statute for the Foundation is scheduled for repeal October 1, 2017.

³³ Section 20.058(3), F.S.

³⁴ Email, Florida Department of Education (Jan. 11, 2017); Florida Fiscal Portal, Department of Education's 2016-2017 Annual Report on Citizen-Support and Direct-Support Organizations, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=14514&DocType=PDF>, at 3-4.

³⁵ Section 20.058(2), F.S.

³⁶ *Id.*

³⁷ 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.

³⁸ Email, Florida Department of Education (Jan. 13, 2017).

³⁹ Section 20.058(4), F.S.

⁴⁰ *Id.*

If repealed, the Foundation will no longer exist statutorily, and the Division will no longer have the statutory authority to organize and incorporate statutorily a direct-support organization.⁴¹ Upon dissolution of the Foundation, all Foundation properties revert to the state.⁴² However, to the extent the Foundation is performing additional duties beyond the requirements specified in statute, reversion of funds or properties pursuant to such duties could be otherwise required by law.⁴³

According to the Division, repeal of the Foundation may also impact the following programs:

Youth Programs: The Able Trust's High School High Tech program would end, resulting in the closure of 43 program sites in 40 Florida counties.⁴⁴ The program provides leadership training, career direction, community involvement, and education to 1,500-2,000 students per year.⁴⁵ The current cost to the state's budget for this program is \$275 per student, which covers slightly more than one-fourth of total program costs.⁴⁶

Additionally, The Able Trust's Florida Youth Leadership Program would no longer operate.⁴⁷ This program is a week-long leadership training program that takes place every summer at Florida State University, and advances high school juniors and seniors with disabilities, plus young adult job seekers, toward a career path and employment. A related alumni association, established a year ago, would also end.⁴⁸

Grant Programs: The Able Trust works with community organizations throughout the state to help them assist Floridians with disabilities in their area to become employed.⁴⁹ There are 60-70 contracts during any annual period (e.g., Susan B. Anthony Rehabilitation Center in Broward County, Science Center in Pinellas County, Vincent Academy in Sarasota, Ark Nassau in Nassau County, and Key Clubhouse in Miami-Dade).⁵⁰ No state funds are used in these strategic grant initiatives.⁵¹

James Patrick Memorial Program: The Able Trust serves as administrator and fiduciary for the James Patrick Memorial Program, authorized in s. 413.402, F.S., which helps fund the services of personal care attendants for eligible workers with disabilities.⁵² Seven contracts to obtain funding for the program exist with state attorney offices in different parts of the state.⁵³

⁴¹ Section 413.615(5), F.S.

⁴² Section 413.615(6)(f), F.S.

⁴³ For example, the Foundation is the fiduciary for the James Patrick Memorial Program pursuant to s. 413.402, F.S., and as fiduciary for the sale of specialty license plates for motorcycles pursuant to s. 320.08068(4)(d), F.S. Additionally, the Foundation has received endowments from private donors for restricted purposes. If The Able Trust were to cease operations, the transfer of these funds to another entity would be complicated, as the language in the endowment and trust documents on the use of those funds would still need to be honored. Email, Florida Department of Education (Feb. 2, 2017).

⁴⁴ Email, Florida Department of Education (Feb. 2, 2017).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Email, Florida Department of Education (Feb. 2, 2017).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

Specialty License Plates for Motorcycles: The Able Trust serves as fiduciary for funds for the sale of specialty license plates for motorcycles pursuant to s. 320.08069(4)(d), F.S.⁵⁴ It collects, distributes, and manages the funds, which benefits five disabilities organizations – Florida Association of Centers for Independent Living, the James Patrick Memorial Program, Preserve Vision Florida, the Brain and Spinal Cord Injury Program – Florida Department of Health, and the Blind Services Foundation of Florida.⁵⁵ The Foundation receives a 10 percent management fee.⁵⁶

Independent Research: The Foundation conducts research to obtain and update data on the perceptions of the business community on the inclusion of people with disabilities in its workforce, learn ways to address barriers, and to inform the general public on the employment rate of such workers.⁵⁷

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:

By saving the DSO from repeal, SB 890 sustains a source of financial and other direct assistance for individuals who are disabled. The Able Trust's grants program works with community organizations throughout the state to help them assist Floridians with disabilities in their area become employed.⁵⁸ The strategic grants initiatives created through the grants program are supported through The Able Trust's fundraising

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Email, Florida Department of Education (Feb. 2, 2017).

activities.⁵⁹ As such, if The Able Trust were to sunset the strategic grant initiatives would end.⁶⁰ Additional programs funded through The Able Trust may also end.⁶¹

C. Government Sector Impact:

The Legislature appropriated \$549,823 to the Florida Endowment Foundation for Vocational Rehabilitation in the 2016-2017 General Appropriations Act.⁶²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 413.615 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.)

None.

B. Amendments:

None.

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

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Specific appropriation 34, ch. 2016-66, L.O.F.