

Updated Report Re: Governance and Funding Changes

Barrier to Success	Solution	Process
Lack of autonomy	Amend current statute to expand authority to raise funds and manage the agency	Legislative change
Conflicting roles re: DSS	Amend current statute to clarify role of Commissioner; authorize appointment of designee	Legislative change
Inability to hire staff	Amend current statute to permit Board to hire staff to the extent funds are available in the Trust Fund	Legislative change
Lack of funding	Amend current statute to empower Board to establish a supporting 501c3 to assist in raising funds for programs	Legislative change
Lack of funding	Include "such sums" appropriation in budget allowing FACT to spend up to the amount in Trust Fund	Line item in budget; appropriation to agency of Trust Funds and, possibly, general funds now in DSS budget
Procurement act issues	Adopt purchasing procedure to authorize noncompetitive services contracts up to \$80,000	Board action to adopt a purchase procedure as allowed by procurement act
Procurement act issues	Request official opinion from Attorney General regarding whether procurement act covers grant making	Chair of Board can request an official opinion from the Attorney General
FOIA/Open Meetings/COI	No change; still a state agency	No change

Background – Children’s Trust Funds

As indicated in the Sustainability Report dated December 2021, Children’s Trust Funds (CTF’s) are organized across the country in one of three ways:

- 1) As a state agency embedded in an agency with a broader purpose or as an independent state agency
- 2) As quasi-governmental agencies with public/private structures and/or attached non-profit fundraising arms; or
- 3) As charitable organizations tax-exempt under Section 501c3 of the Internal Revenue Code (five states, including, for example, Maine and New Hampshire, which transitioned from a quasi-government entity).

As reported in the Sustainability Report, a majority of these Trust Funds have budgets between \$500,000 and \$6,000,000. According to the Report, top revenue sources include fees from birth certificates, marriage licenses and divorce filings, income tax check-offs, specialty license plates, state-allocated funds, foundation grants, private donations, special fundraising events, and endowment income and interest. Many also receive funds for and administer a variety of federal programs. The CTF’s with larger budgets mostly fall in the category of those administering federal programs.

FACT Remains Embedded in DSS

Despite the Board’s strong recommendation that the administration consider making FACT an independent agency, an inquiry of the Secretary indicated that the administration would not support legislation authorizing such a change at this time. This is true despite a general awareness that the current “assignment” of FACT to the Department of Social Services (DSS) and its dependence on the Department for staffing constrains the ability of the FACT Board to carry out its duties, whether making grants, encouraging public education, or advising the administration.

To maximize FACT’s effectiveness in accomplishing its purpose of supporting and developing services for the prevention and treatment of child abuse and neglect and violence within families through the kind of public-private collaboration envisioned at its founding, some changes in its structure and authority are needed even if FACT remains embedded in DSS. The recommended changes to the current statutory scheme and budget authorization would enhance FACT’s effectiveness and the Board’s ability to achieve the agency’s mission.

Changes to the current Code governing the Board and the agency could address barriers limiting FACT’s effectiveness and could be made without making FACT an independent state agency. These changes could:

- 1) Clarify that the Trustees may receive reimbursement of expenses associated with their service on the Board.
- 2) Give the FACT Board of Trustees explicit authority to establish a supporting 501(c)(3) organization like Prevention Connections (PC) established by the Virginia Foundation for Healthy Youth. According to the Foundation: PC “serves as a nonprofit partner organization to acquire resources for activities that complement and expand the childhood obesity and tobacco-use prevention efforts of the Virginia Foundation for Healthy Youth (VFHY).” Tax returns filed by PC show that funding is derived from contributions and fees charged for programs offered by PC. No state or federal funds were reported on PC’s 990s through 2020.
- 3) Give the FACT Board of Trustees the authority to hire and compensate employees from money in the Trust Fund or other funds appropriated explicitly for FACT in the budget by the General Assembly. The appropriation to FACT would be a “such sums” appropriation that could come from a line item in the DSS budget and/ or from the Trust Fund which will include Gaming Funds previously authorized.
- 4) Modify the Commissioner’s role on the Board to alleviate any real or perceived conflict arising out of the FACT Board’s role as an advisor to the Department, the Secretary, and the Governor.
- 5) Clarify that counsel to the Board and Trust Fund will continue to be provided by the Office of the Attorney General.

The proposed legislation (attached) does not include any provision to exempt FACT from the general requirements imposed on state agencies, including the state’s procurement and open meetings laws. The Board has the authority under current procurement law, Section 2.2-4303G (see Appendix A), to alleviate some of the issues regarding grants and contracts less than \$80,000 by adopting a procurement procedure authorizing noncompetitive contracts for these smaller amounts. The Board could also ask its chair to request an official Attorney General’s opinion to clarify whether FACT has to follow the procurement act when making grants rather than purchasing goods or services.

Legislative Strategy

Now that it has been determined whether the current administration will not support legislation making FACT an independent agency, the strategy needs to refocus on gaining support for some changes in FACT’s current governing statutes that will enhance its effectiveness. Now that the general election slates are set, however, it will be possible to identify legislative champions for FACT who could prefile legislation for the 2024 Session in the fall (legislation can be filed beginning November and drafts must be requested by November 30 for bills to be pre-filed

by first day of 2024 session). Early filing will allow FACT Trustees and supporters to begin educating legislators (including those newly elected in the fall), and the public to understand how the legislation will enhance FACT's ability to accomplish its purpose.

Selecting legislative champions in the House and Senate should focus first on incumbents in leadership of both parties or serving on the committees to which the legislation would be referred, or a budget amendment considered. Continuing members of both houses would likely have an advantage when it comes to passing legislation in 2024.

In the House well-positioned Republicans would include Delegates Terry Kilgore, Bobby Orrock and Carrie Coyner and well-positioned Democrats would include Delegates Mark Sickles, Sam Rasoul, and Cia Price. In the Senate, well-positioned Democrats would include Senators Mamie Locke, Adam Ebbin, Ghazala Hashmi and well-positioned Republicans would include David Sutterlein, Ryan McDougal and Bill Stanley.

Members of the Board should review the attached draft legislation and determine if changes are needed. Once the Board agrees on a draft, members should review the proposed legislation with the Commissioner to gain his support if possible. Then, Board members should begin approaching legislators to seek support and identify patrons to file the bill when pre-filing begins in November.

Procurement Act Provision Authorizing Non-competitive Procurement of Services

2.2-4303. (Effective July 1, 2023) Methods of procurement.

G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for:

1. Goods and services other than professional services and non-transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed \$200,000; and

2. Transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000.

However, such small purchase procedures shall provide for competition wherever practicable.

Such purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed \$80,000.

Where small purchase procedures are adopted for construction, the procedures shall not waive compliance with the Uniform State Building Code.

For state public bodies, informal solicitations conducted under this subsection shall require the posting of a public notice on the Department of General Services' central electronic procurement website. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

Sample Purchasing Policy Language (from local government procurement policy)

§300.08 Professional and Consulting Services

(A) The procurement of professional and consulting services by the Board or any Using Department shall be by competitive negotiation pursuant to § 700.00 *et seq.* of these regulations, if the cost is \$80,000 or greater.

(B) The procurement of professional and consulting services costing less than \$80,000 may be exempt from competition, provided such action is approved in writing and in advance by the County Executive.