

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 General Government

BILL: CS/SB 1200

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Bean

SUBJECT: Pay-for-Success Contract Program

DATE: February 10, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	Fav/CS
2.	Davis	DeLoach	AGG	Recommend: Favorable
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1200 authorizes a state agency, contingent upon authorization in the General Appropriations Act, to negotiate and enter into a pay-for-success contract with a private entity. The bill defines the “pay-for-success contract” as a contract between a state agency and a private entity to fund a high-quality program to address a critical public problem with historically poor outcomes.

The bill specifies the duties of the state agency for a pay-for-success contract. An independent evaluator must determine whether the outcome measures have been met under the contract, and the private entity must report annually to the state. Funding obtained under this program is not considered a procurement item under s. 287.057, F.S.

By December 1, 2016, the Department of Management Services (DMS) must prescribe the procedures to be used by state agencies in connection with pay-for-success contracts.

The fiscal impact to state funds is indeterminate and, according to the DMS, can be absorbed within existing resources.

The bill takes effect upon becoming a law.

II. Present Situation:

Pay-for-Success Contract Program

A pay-for-success program allows the state to enter into contracts with private non-profit organizations to provide targeted services.¹ The non-profits will provide initial funding for the services provided under the contract. If the private entity achieves the performance measure outcomes identified in the contract, the entity will have earned the 'success payment' from the DMS. This success payment is presumably the costs of the services plus some level of profit or incentive for achieving the contracted outcomes.

Chapter 287, Florida Statutes

Chapter 287, F.S., regulates state agency² procurement of personal property and services.³ Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- "Invitations to bid," which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- "Requests for proposals," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "Invitations to negotiate," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.⁴

Contracts for commodities or contractual services in excess of \$35,000 must be procured using a competitive solicitation process.⁵ However, some specified contractual services and commodities are not subject to competitive-solicitation requirements.⁶

¹ See <http://www.sayfiereview.com/page/Lawmakers%20seek%20pay%20for%20success%20program> (last visited on January 20, 2016).

² As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

³ Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

⁴ See ss. 287.012(6) and 287.057, F.S.

⁵ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

⁶ See s. 287.057(3)(e), F.S.

The DMS assists state agencies and eligible users by providing uniform commodity and contractual service procurement policies, rules, procedures, and forms.⁷

III. Effect of Proposed Changes:

Section 1 provides numerous definitions necessary to implement the pay-for-success contracts. The term “pay-for-success contract” or “contract” is defined as a contract entered into between a state agency and a private entity to fund a high-quality program specified in the General Appropriations Act, to address a critical public problem with historically poor outcomes. The term “private entity” is defined as a private, not-for-profit organization exempt from federal income taxation pursuant to s. 501(c)3 of the Internal Revenue Code of 1986, which enters into a pay-for-success contract with a state agency and subcontracts with one or more entities to provide the actual services. The term “success payment” is defined as the amount paid to a private entity that meets the performance outcome measures established in a pay-for-success contract.

Under the pay-for-success concept, the private entity must secure initial funding for the services provided under the contract from private-sector investors and enter into separate subcontracts with entities providing the services for the identified program.

Contingent upon authorization in the General Appropriations Act, a state agency may negotiate and enter into a pay-for-success contract with a private entity. This contract may be initiated in one fiscal year and continue into subsequent fiscal years and may be paid from the appropriations authorized in any of those fiscal years.

The state agency is required to:

- Determine performance outcome measures to be included in the contract.
- Determine the data to be included in an annual report filed by a private entity pursuant to subsection (4) of this section.
- Select an independent, nationally recognized evaluator through a request for proposals process to annually evaluate the performance outcome measures specified in the contract.
- Ensure that participants of the program or their guardians have given permission to share participate data and signed an acknowledgment that data may be shared with an independent evaluator for research and evaluation purposes, and maintain documentation of the required acknowledgements.

A pay-for-success contract must:

- Be limited to quality programs specified in the General Appropriations Act.
- Require the private entity to underwrite or secure upfront capital from private funders, such as foundations, banks, or businesses, to fund the services provided under the subcontracts.
- Require an independent evaluator to determine whether the specified performance outcomes have been achieved.
- Require a success payment, consistent with the General Appropriations Act, only if the specified performance outcome measures are achieved.

⁷ Section 287.032(2), F.S.

- Prohibit the private entity from receiving or viewing any personally identifiable participant information.

The private entity shall annually report to the state for the duration of the contract period. In addition, the bill specifies that funding for a high-quality program under this bill is not considered a procurement item under s. 287.057, F.S.

By December 1, 2016, the DMS shall prescribe the procedures to be used by state agencies in connection with pay-for-success contracts which are consistent with this section.

Section 2 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

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:

CS/SB 1200 has an indeterminate fiscal impact. Investors who fund the private providers of services could potentially lose their investments if the service provider does not meet the outcome measures whereby the state would not be required to make payment for the services provided.

C. Government Sector Impact:

Funding for pay-for-success contracts is contingent upon authorization and limited to programs specified in the General Appropriations Act. In addition, the bill requires the DMS to prescribe procedures in connection with these contracts. According to the DMS, the impact of the additional workload can be absorbed within existing resources.⁸

⁸ Telephone conversation with the DMS staff on February 4, 2016.

VI. Technical Deficiencies:

Lines 67-68 of the bill provide: “Funding obtained for a high-quality program under this section is not a procurement item under s. 287.057, Florida Statutes.” It is unclear whether this provision is intended to deem the private entity’s efforts to obtain private investment not be subject to the competitive procurement process. If this is the intent, the provision is most likely unnecessary.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 287.05715 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Governmental Oversight and Accountability on January 26, 2016:**

- Revises the definition of “pay-for-success contract;”
- Revises the definition of “private entity;”
- Deletes provisions of the original bill regarding the DMS’s oversight of a pay-for-success contract program;
- Deletes provisions of the original bill regarding the Office of Economic and Demographic Research’s provision of information to state agencies;
- Authorizes a state agency to negotiate or enter into a pay-for-success contract with a private entity, contingent upon authorization in the General Appropriations Act;
- Provides that a pay-for-success contract initiated in one fiscal year may continue into subsequent fiscal years, and may be paid from appropriations authorized in any of those fiscal years;
- Specifies the duties of a state agency for a pay-for-success contract; and
- Requires the DMS to prescribe the procedures to be used by state agencies in connection with pay-for-success contracts.

B. Amendments:

None.