

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: SB 1200  
INTRODUCER: Senator Bean  
SUBJECT: Pay-for-Success Contract Program  
DATE: January 25, 2016      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	<b>Pre-meeting</b>
2.			AGG	
3.			AP	

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**I. Summary:**

SB 1200 requires the Department of Management Services (DMS) to oversee a Pay-for-Success Contract Program. The bill defines the terms “pay-for-success contract”, “private entity”, and “success payment.”

The bill authorizes the DMS, contingent upon authorization in the General Appropriations Act, to negotiate and to enter into contracts with private providers to fund high-quality programs. The bill specifies the duties of DMS.

The Office of Economic and Demographic Research is required to provide information to DMS to assist in determining performance outcome measures for the pay-for-success contract. An independent evaluator must determine whether the outcome measures have been met under the contract.

Any private entity that receives a payment pursuant to a pay-for-success contract must report annually to the DMS. Funding obtained under this program is not considered a procurement item under s. 287.057, F.S.

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.<sup>1</sup> The non-profits will provide initial funding for the

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

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 DMS. This success payment is presumably the costs of the services plus some level of profit or incentive for achieving the contracted outcomes.

### **Office of Economic and Demographic Research**

The Office of Economic and Demographic Research (EDR)<sup>2</sup> is a research arm of the Legislature principally concerned with forecasting economic and social trends that affect policy making, revenues, and appropriations.<sup>3</sup> EDR provides objective information to committee staffs and members of the Legislature in support of the policy making process. EDR publishes all of the official economic, demographic, revenue, and agency workload forecasts that are developed by the Consensus Estimating Conferences<sup>4</sup> and makes them available to the Legislature, state agencies, universities, research organizations, and the general public.

### **Chapter 287, Florida Statutes**

Chapter 287, F.S., regulates state agency<sup>5</sup> procurement of personal property and services.<sup>6</sup> 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.<sup>7</sup>

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<sup>2</sup> Section 1.01(19), F.S.

<sup>3</sup> See <http://edr.state.fl.us/Content/> (last visited on January 20, 2016).

<sup>4</sup> Sections 216.133-216.138, F.S. Also, see <http://edr.state.fl.us/Content/conferences/index.cfm> (last visited on January 20, 2016).

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> See ss. 287.012(6) and 287.057, F.S.

Contracts for commodities or contractual services in excess of \$35,000 must be procured using a competitive solicitation process.<sup>8</sup> However, some specified contractual services and commodities are not subject to competitive-solicitation requirements.<sup>9</sup>

### III. Effect of Proposed Changes:

**Section 1** provides numerous definitions necessary to implement the pay-for-success contracts. The term “pay-for-success contract” is defined as a contract entered into between DMS and a private entity to fund a high-quality program specified in the General Appropriations Act. The term “private entity” is defined as a private, not-for-profit organization that enters into a pay-for-success contract with a service provider. 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 contracts with entities providing the services for the identified program.

The DMS is required to oversee the Pay-for-Success Contract Program. Contingent upon authorization in the General Appropriations Act, DMS may negotiate and enter into a pay-for-success contract with a private entity selected through a competitive process. This contract may be initiated in one fiscal year and continue into the next fiscal year and may be paid from the appropriations of one or both fiscal years.

DMS is required:

- Determine performance outcome measures that must be included in the contract. The Office of Economic and Demographic Research and the appropriate state agency shall provide information to the DMS to assist in the determination of these measures.
- Determine the data to be included in an annual report filed by a private entity pursuant to subsection (5) 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 high-quality program or their guardians have given permission and signed an acknowledgment that participant 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 high-quality programs specified in the General Appropriations Act.
- Require that funding for services is provided by the private sector.
- Require an independent evaluator to determine whether the specified performance outcomes have been achieved.

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<sup>8</sup> 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.

<sup>9</sup> See s. 287.057(3)(e), F.S.

- Require a success payment, consistent with the General Appropriations Act, only if the specified performance outcome measures are achieved.
- Prohibit the private entity from receiving or viewing any personally identifiable participant information.

At the direction of the DMS, an independent evaluator must determine whether the performance outcome measures specified in the contract have been met. The DMS may authorize a success payment to the private entity if the performance outcome measures have been met.

A private entity that receives a repayment of an investment or a success payment pursuant to a contract entered into under this section shall annually report to the DMS for the duration of the contract period.

At the request of the DMS, the Office of Economic and Demographic Research shall estimate the total cost savings related to the high-quality program.

This section specifies that funding for a high-quality program under this bill is not considered a procurement item under s. 287.057, F.S.

**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:**

Indeterminate. Investors who fund the private providers of services could potentially lose their investments if the service provider did not meet the outcome measures whereby the state would not be required to make payment for the services provided.

C. Government Sector Impact:

Indeterminate.

**VI. Technical Deficiencies:**

Lines 88-90 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 to be subject to the competitive procurement process. If this is the intent, the provision is most likely unnecessary.

Or if it is the intent to exempt the procurement of the service under the pay-for-success contract from the competitive procurement process, then a conflict may exist within the bill. On lines 39-43 of the bill, DMS is directed to “negotiate . . . with a private entity that is selected through a competitive process.”

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates an undesignated section 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.