

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 Health Policy

BILL: SB 1446

INTRODUCER: Senator Rouson

SUBJECT: Pay-for-success Contracts

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Ferrin	GO	Favorable
2.	Lloyd	Stovall	HP	Pre-meeting
3.			AP	
4.			RC	

I. Summary:

SB 1446 authorizes a state agency, contingent upon authorization in the General Appropriations Act (GAA), to negotiate and enter into a pay-for-success contract with a private entity. The bill defines the terms “pay-for-success contract,” “private entity,” and “success payment.”

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 agency. Funding obtained under this program is not considered a procurement item under s. 287.057, F.S.

Contingent upon authorization in the GAA, the Department of Health (DOH) is authorized to implement the Nurse-Family Partnership (NFP) pay-for-success contract as an evidence-based practice model or provider.

The bill provides a nonrecurring appropriation of \$850,000 from the General Revenue Fund for the fiscal year 2017-2018 to the DOH, to support existing infrastructure and implementation of the NFP model in designated Healthy Start Coalitions and federally qualified health centers (FQHCs).

By December 1, 2017, the Department of Management Services (DMS) must prescribe the procedures to be used by state agencies in connection with pay-for-success contracts.

The bill takes effect on July 1, 2017.

II. Present Situation:

Pay-for-Success Contract Program

A pay-for-success program allows a governmental entity to enter into contracts with private non-profit organizations to provide targeted services. Initial funding for these services is provided by private investors. When a performance measure outcome identified in the contract is achieved, as recognized by an independent evaluator, the governmental entity makes a “success payment.” The amount of the success payment is specified in the contracts, but presumably covers the costs of the services plus some level of return on the initial investment made by private investors.¹

Nurse-Family Partnership of Florida

The Nurse-Family Partnership of Florida (NFP) is an evidence-based, community health program that serves low-income, high-risk women pregnant with their first child.² Each mother is partnered with a registered nurse early in her pregnancy and receives ongoing nurse visits that continue through her child’s second birthday.

The NFP goals³ are to improve:

- Pregnancy outcomes by helping women engage in good preventive health practices, including thorough prenatal care from their healthcare providers, improving their diets, and reducing their use of cigarettes, alcohol and illegal substances;
- Childhood health and development by helping parents provide responsible and competent care; and
- Economic self-sufficiency of the family by helping parents develop a vision for their own future, plan future pregnancies, and continue their education and find work.

The NFP began serving its first Florida clients in Palm Beach County in 2008 and in Pinellas County in 2011.⁴ The NFP also serves clients in Broward, Collier, Duval, Gadsden, Hendry, Hillsborough, Lee, Miami-Dade, and Orange counties.⁵

The NFP of Florida reports that of the clients served under its program, the following positive outcomes were achieved through June 30, 2014:

- 89 percent of babies were born full term;
- 86 percent of mothers initiated breastfeeding; and
- 94 percent of children received all recommended immunizations by 24 months old.⁶

¹ See <http://www.payforsuccess.org/learn/basics/> (last visited on March 28, 2017).

² See https://www.nursefamilypartnership.org/assets/PDF/Communities/State-profiles/FL_State_Profile.aspx (last visited on March 28, 2017).

³ *Id.*

⁴ See <http://www.nursefamilypartnership.org/locations/Florida> (last visited on March 28, 2017).

⁵ See <http://www.nursefamilypartnership.org/locations/Florida/find-a-local-agency> (last visited on March 28, 2017).

⁶ *Supra* note 2.

Department of Health

The Department of Health was created in 1996,⁷ and its purpose is to protect and promote the health of all residents and visitors in the state through organized state and community efforts, including cooperative agreements with counties.⁸ One of the DOH's duties is to provide or ensure the provision of quality health care and related services to identified populations in the state.⁹

The 2016-2017 GAA provided a total of \$681,250 in non-recurring funds to the DOH to integrate the NFP home visiting model in designated Healthy Start Coalitions and FQHCs.¹⁰ The NFP, coalitions, and FQHCs were to provide intensive nurse visitation services for women and their infants. The DOH contracted with the Florida Association of Healthy Start Coalitions to implement the NFP model at 5 additional clinic sites located in Brevard, Hillsborough, Miami-Dade (two sites), and Orange counties through sub-contracts (Contract period of September 1, 2016 – June 30, 2017).¹¹

This appropriation also authorized \$10,000 for the DOH to contract with the NFP National Service Office for process and outcome data identification, management, analysis, training, and programmatic support (Contract period of September 16, 2016 – June 30, 2017).¹²

Chapter 287, Florida Statutes

Chapter 287, F.S., regulates state agency¹³ procurement of personal property and services.¹⁴ 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

⁷ Section 20.43, F.S.

⁸ Section 20.43(1), F.S.

⁹ Section 20.43(1)(e), F.S.

¹⁰ Chapter 2016-66, s. 3, Line 467, Laws of Fla.

¹¹ E-mail from Bryan P. Wendel, Government Analyst II, Office of Legislative Planning, Department of Health (March 17, 2017) (on file with the Senate Committee on Governmental Oversight).

¹² *Id.*

¹³ 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.

¹⁴ 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.

- “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.¹⁵

Contracts for commodities or contractual services in excess of \$35,000 must be procured using a competitive solicitation process.¹⁶ However, some specified contractual services and commodities are not subject to competitive-solicitation requirements.¹⁷

The DMS assists state agencies and eligible users by providing uniform commodity and contractual service procurement policies, rules, procedures, and forms.¹⁸

State and Federal Audit Requirements

Any agency agreements funded with state or federal assistance to a nonstate recipient or a subrecipient are subject to the requirements of ss. 215.97 and 215.971, F.S. The Florida Single Audit Act, s. 215.97, F.S., provides for an audit of a nonstate entity’s financial statements and state financial assistance conducted in accordance with the auditing standards as stated in the rules of the Auditor General.¹⁹ Under the Single Audit Act, there is an audit threshold which is triggered when a nonstate entity expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year.²⁰ A nonstate entity under the act is defined as a local government entity, higher education entity, nonprofit organization, or for-profit organization that receives state financial assistance.²¹

Additionally, for agreements funded with federal or state assistance, s. 215.971, F.S., requires specific deliverables and a provision that describes the scope of work, that deliverables be related to the scope of work, completion of a minimum level of work before payments; consequences for unmet obligations including the return of unobligated funds, and a final reconciliation report. Each agreement must also have a designated contract manager who is a certified contract manager through DMS and DFS.

Under s. 216.3475, F.S., agencies must maintain records to support a cost analysis, which includes a detailed budget submitted by any entity awarded funding on a noncompetitive basis and the agency’s documented review of individual cost elements from the submitted budget for allowability, reasonableness, and necessity. Funds that are awarded on a noncompetitive basis to a person or entity specifically designated through the GAA to provide services through funds designated in the GAA may not receive payment in excess of the competitive prevailing rate for those services unless expressly authorized in the GAA.

¹⁵ See ss. 287.012(6) and 287.057, F.S.

¹⁶ 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.

¹⁷ See s. 287.057(3)(e), F.S.

¹⁸ Section 287.032(2), F.S.

¹⁹ Section 215.97(2)(x), F.S.

²⁰ Section 215.97(2)(a), F.S.

²¹ Section 215.97(2)(n), F.S.

Federal regulations also govern allowable costs with state agency contracts with nonstate entities where federal funds will be paid out under 2 C.F.R. Part 200. Costs must meet the following general criteria in order to be allowable under federal awards:

- Be necessary and reasonable for the performance of the federal award and be allocable thereto in order to be allowable under these principles;
- Conform to any limitations or exclusions set forth in these principles or in the federal award as to types or amount of cost items;
- Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the non-federal entity;
- Be accorded consistent treatment. A cost may not be assigned to a federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the federal award as an indirect cost;
- Be determined in accordance with generally accepted accounting principles (GAAP), except for state and local governments and Indian tribes only, as otherwise provided in this part;
- Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period; and
- Be adequately documented.²²

The federal regulations also define reasonable costs, how to classify direct and indirect costs, and which items are allowable costs under federal grants and agreements.

III. Effect of Proposed Changes:

Section 1 provides definitions necessary to implement the pay-for-success contracts.

The term “pay-for-success contract” or “contract” is defined as a contract between a state agency and a private entity to fund a program, as specified in the GAA, to address a critical public problem with historically poor outcomes.

The term “private entity” is defined as a private, not-for-profit organization, or a subsidiary or an affiliate thereof, 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 when performance outcome measures established in the pay-for-success contract are met, or as otherwise set forth in the 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 GAA, 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, may

²² 2 C.F.R. § 200.403.

continue into subsequent fiscal years, and may be paid from appropriations authorized in any of those fiscal years.

The state agency is required to:

- Determine performance outcome measures to be included in the contract in consultation with the private entity and provider.
- Determine the data to be included in an annual report filed by a private entity.
- Select an independent, nationally recognized evaluator through competitive solicitation procedures to evaluate the performance outcome measures specified in the contract.
- Ensure that subcontractors share participant data and sign an acknowledgment that the 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 meet all of the following requirements:

- Be limited to programs specified in the GAA.
- Require the private entity to underwrite or secure upfront capital from private funders, such as foundations, banks, businesses, or individuals 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 GAA, if the specified performance outcome measures are achieved.
- Prohibit the private entity from receiving or viewing any personally identifiable participant information.

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

The bill also requires the DMS to prescribe the procedures to be used by state agencies in connection with pay-for-success contracts by December 1, 2017.

Section 2 provides that, contingent upon authorization in the GAA, the DOH is authorized to implement the NFP pay-for-success contract as an evidence-based practice model or provider. All subsequent models or providers funded under this program are subject to the same requirements provided under s. 287.05715, F.S., as created by this bill.

Section 3 appropriates the nonrecurring sum of \$850,000 from the General Revenue Fund for fiscal year 2017-2018, to the DOH to support existing infrastructure and implementation of the NFP model in designated Healthy Start Coalitions and FQHCs as provided in Specific Appropriation 467 of the 2016-2017 GAA in preparation for participation in the pay-for-success contract program established under s. 287.05715, F.S., as created by this bill.

Section 4 provides an effective date of 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:

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. However, if the performance and outcome measures are met, the investors receive their investment back, plus a small return on their investment. The amount of that return would depend upon the individual terms of the contract between the private entity and the state entity.

Additionally, private providers are used to deliver the services under these contracts. As more pay-for-success contracts are awarded, the more private providers across the state will be involved in the opportunity to achieve performance payments and assist the state achieve positive outcomes.

C. Government Sector Impact:

Section 2 of the bill addresses funding specifically for the DOH's implementation of the NFP pay-for-success contract. Non-recurring General Revenue funding of \$850,000 is provided to the DOH to support existing infrastructure and the implementation of the NFP model in designated Healthy Start Coalitions and FQHCs. Funding for new pay-for-success contracts is contingent upon a specific authorization in the GAA.

The DMS is tasked with prescribing the procedures to be used by state agencies in connection with pay-for-performance contracts. These procedures have not yet been developed. As of publication of the analysis, the DMS has not provided an estimate of the impact.

The Department of Financial Services (DFS), Bureau of Auditing audits and settles obligations that are requested for the State of Florida. Most payments for vendors are

paid with a voucher schedule through the Bureau of Auditing and are paid based on the terms of the contractual agreement. The term “success payment” could be in conflict with the contract payment terms and audit requirements under s. 215.97, F.S., and 2 C.F.R. Part 200, according to DFS.

In addition, if the contract is awarded on a non-competitive basis, then a cost analysis by the DOH and the vendor would need to be performed in accordance with s. 216.3475, F.S.²³

VI. Technical Deficiencies:

Lines 100-101 of the bill provide, “Funding obtained for a program under this section is not a procurement item under s. 287.057, F.S.” 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.

VII. Related Issues:

The bill requires the private entity to report annually; however, in two places, “success payments” are required to be made when performance measures are met or achieved, or as otherwise set forth in the contract. It is unclear if the annual report later contains information that shows that measures were not met, if the state can recoup funds or if reporting can occur at the same time that payment is requested.

VIII. Statutes Affected:

This bill creates section 287.05715 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.

²³ Florida Department of Financial Services, *House Bill 1187 Analysis (Identical to SB 1446)* (Mar. 8, 2017) (on file with the Senate Committee on Health Policy).