HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 767 Pay-For-Success Contracts
SPONSOR(S): Ausley
TIED BILLS: **IDEN./SIM. BILLS:** SB 1084

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	12 Y, 0 N	Moore	Harrington
2) Appropriations Committee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

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 contract, but presumably covers the costs of the services plus some level of return on the initial investment made by private investors.

Contingent upon a specific appropriation in the GAA, the bill authorizes an agency to enter into a pay-for-success contract with a private entity to receive upfront capital from the entity to fund a specific service or program. Such services or programs are limited to early childhood care and education programs, education and employment programs, public safety programs, health and human services programs, and long-term, home-based, and community-based care services and programs.

The bill prohibits an agency from entering into a pay-for-success contract until the state agency head determines with reasonable certainty that the contract will result in quantifiable public benefits and monetary savings to the state or a local government by reducing or avoiding costs, increasing economic productivity, or improving client outcomes. The bill specifies requirements that each pay-for-success contract must meet.

By December 1, 2018, DMS must prescribe procedures to be used by an agency when executing a pay-for-success contract with a private entity consistent with the bill's requirements.

The bill does not appear to have a fiscal impact on the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency[1] procurement of personal property and services. The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.[2] DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.[3]

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:[4]

- 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 proposal, 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 highly complex, customized, mission-critical services.

For contracts for commodities or services in excess of $35,000, agencies must utilize a competitive solicitation process;[5] however, certain contractual services and commodities are exempt from this requirement.[6]

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 contract, but presumably covers the costs of the services plus some level of return on the initial investment made by private investors.[7]

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[1] The term "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. The term does not include the university and college boards of trustees or the state universities and colleges. Section 287.012(1), F.S.
[2] *See* ss. 287.032 and 287.042, F.S.
[3] *Id*.
[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.
[6] *See* s. 287.057(3), F.S.
[7] *What is Pay for Success?*, Nonprofit Finance Fund Pay for Success, http://www.payforsuccess.org/learn/basics/ (last visited Jan. 12, 2018).

Effect of the Bill

Contingent upon a specific appropriation in the GAA, the bill authorizes an agency to enter into a pay-for-success contract with a private entity to receive upfront capital from the entity to fund a specific service or program as outlined below. The agency may not enter into a pay-for-success contract until the state agency head determines with reasonable certainty that the contract will result in quantifiable public benefits and monetary savings to the state or a local government by reducing or avoiding costs, increasing economic productivity, or improving client outcomes.

The services or programs that are eligible for funding under a pay-for-success contract are limited to:

- Early childhood care and education programs, including prekindergarten and school readiness programs from birth to five years of age.
- Education, workforce preparedness, and employment programs, including school-to-work programs and alternative education services.
- Public safety programs, including programs that reduce recidivism and address juvenile justice.
- Health and human services, including drug and alcohol addiction, mental health, chronic homelessness, supportive housing, and child welfare services and programs.
- Long-term, home-based, and community-based care services and programs.

The bill requires each pay-for-success contract to:

- Require a private entity to underwrite or secure upfront capital from private funding sources, including foundations, financial institutions, businesses, or individuals.
- Identify the specific service or program to be funded under the contract.
- Identify performance targets and outcome measures against which the service or program's success can be measured to determine whether the service or program has achieved quantifiable public benefits and monetary savings.
- Require an independent third-party evaluator to review and issue a report in the middle and at the end of the contract term specifying the degree to which the service or program has met the identified performance targets and outcome measures.
- Identify the calculation or algorithm to be used by the agency in determining the amount and timing of reimbursable success payments to the private entity. The amount of each success payment must correlate with the independent third-party evaluator's review.
- Contain a statement that the service provider will annually provide a report to the agency that includes data deemed relevant by the agency.
- State that the amount of funds to be reimbursed to the private entity is contingent upon the degree to which the service or program has met the performance targets and outcome measures as evaluated by the independent third-party evaluator.
- Require the agency to make the appropriate success payment to the private entity within 60 days after receiving a report from the independent third-party evaluator.
- Contain a provision authorizing cancellation of the contract if the agency believes the degree to which the service or program has met the identified performance targets and outcome measures, as reported by the third-party evaluation, is insufficient to warrant continuation of the service or program.

The private entity is prohibited from viewing or receiving any personal client information that is otherwise confidential and exempt. By April 1 annually, the bill requires the agency to provide a report to the chairs of the legislative appropriations committees that contains the data provided by each service provider and, if available, each evaluation from each independent third-party evaluator.

By December 1, 2018, DMS must prescribe procedures to be used by an agency when executing a pay-for-success contract with a private entity consistent with the bill’s requirements.

The bill authorizes the balance of any appropriation from the General Revenue Fund for a pay-for-success contract that is not disbursed but that is obligated pursuant to contract or committed to be expended by June 30 of the fiscal year in which the funds are appropriated to be carried forward for up to three years after the effective date of the original appropriation.

The bill creates the following definitions related to pay-for-success contracts:

- “Pay-for-success contract” or “contract” to mean a written agreement executed between an agency and a private entity in which the agency agrees, contingent upon a specified service or program meeting specified performance targets and outcome measures, to reimburse the private entity for up-front capital it will provide to fund a service or program that addresses a critical public problem.
- "Private entity" means a private, not-for-profit organization, or a subsidiary or an affiliate thereof, that is exempt from federal income taxation pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986 and that enters into a pay-for-success contract with an agency.
- "Service provider" means an entity that provides services on behalf of a private entity under a pay-for-success contract.
- "Success payment" means a single payment or schedule of payments that is identified in a pay-for-success contract to be paid to a private entity when specified performance targets and outcome measures are met.

B. SECTION DIRECTORY:

Section 1. creates s. 287.05715, F.S., relating to pay-for-success contracts.

Section 2. provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to impact state government revenues.

2. Expenditures:

   The bill does not appear to impact state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to impact local government revenues.

2. Expenditures:

   The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill requires DMS to prescribe procedures to be used by an agency when executing a pay-for-success contract with a private entity consistent with the bill's requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.