

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1083 Quasi-public Entities
SPONSOR(S): Shoaf and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1570

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	15 Y, 0 N	Toliver	Smith
2) Public Integrity & Elections Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Throughout the Florida Statutes, entities have been established that are neither entirely governmental in nature nor entirely private, but possess traits from both the public and private sectors. These entities are often referred to as quasi-public entities. The reasons for their establishment in law varies from entity to entity.

The bill establishes certain accountability, oversight, and transparency provisions applicable to all quasi-public entities (QPEs), which are defined as an entity established in law, regardless of form, for a public purpose or to effectuate a government program, and that is not directly controlled by a governmental entity. QPEs do not include citizen support organizations or direct-support organizations.

The bill requires each QPE to sunset at a date certain, unless the entity is reviewed and saved from repeal by the Legislature. For a QPE created in law on or after July 1, 2021, the bill requires the QPE to sunset on June 30 of the seventh year after enactment. For QPEs already established in law, the bill creates a tiered sunset scheme with the entity sunsetting in 2025 or 2026, depending on when the entity was created.

The bill requires each QPE to have an affiliated department to serve in an advisory capacity to the governing body of the QPE. For entities already established in law, the Governor must assign each entity an affiliated department, unless a department is already specified in law. The head of the affiliated department must annually review the activities of the entity and recommend any necessary statutory changes to the Legislature.

The bill requires each QPE to contract with an independent entity to conduct a cost-benefit analysis of the entity every 10 years and to submit the analysis to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the entity's affiliated department. For entities established before July 1, 2021, the bill requires the initial analysis be completed by either 2023 or 2024, depending on when the entity was created.

The bill requires each QPE to annually report certain information to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the entity's affiliated department. The bill also requires each QPE to maintain a publicly accessible website that includes certain information, including the annual report to the Governor, Legislature, and the entity's affiliated department.

The bill creates a salary cap for employees of a QPE and prohibits the entity from using public funds to retain a lobbyist. The bill also prohibits the executive director of a QPE from being involved in the selection, appointment, or retention of any member of the entity's governing body. Finally, the bill prohibits a QPE from creating an entity separate from itself, requires the QPE to post certain contract information to the Florida Accountability Contract Tracking System, and requires meetings of the governing body to be video recorded.

The bill will likely have an insignificant negative fiscal impact on state government expenditures and no fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Quasi-public Entities

Throughout the Florida Statutes, entities have been established that are neither entirely governmental in nature nor entirely private, but possess traits from both the public and private sectors. These entities are often referred to as quasi-public entities (QPE). The reasons for their establishment in law varies from entity to entity. Some are independent entities created to advance certain policy goals. For example, Enterprise Florida, Inc., was established to increase private investment in Florida.¹ Others, like the Florida Healthy Kids Corporation,² are created as administrators of government programs to provide specified services to the public or to achieve a particular outcome in the state or in a community.

Just as the purposes of these QPEs vary, so too do their structures. For example, some are nonprofit corporations established completely independent of government and others are for-profit corporations funded through methods that allow the entity to be entirely self-sufficient. The governing body of a QPE, usually a board of directors or board of trustees, varies, too. Not only does the membership for these boards vary,³ but the composition of the governing body also differs greatly from entity to entity, ranging from government officials and political appointees to private sector representatives and board-elected members.

While many of the statutes that create and govern QPEs set forth certain accountability measures, these measures are not uniform or consistent. Certain statutes require audits to be performed on a specific schedule⁴ while others require reports to various entities or require governmental entities to review the activities of the QPE.⁵

Florida Accountability Contract Tracking System

The Transparency Florida Act⁶ (Act) requires certain state budget information, state agency salary information, and certain state contract information to be readily available online. The Act requires the Chief Financial Officer (CFO) to maintain a secure contract tracking system available for viewing and downloading by the public known as the Florida Accountability Contract Tracking System (FACTS). Within 30 days after executing a contract, each state agency must post certain information relating to the contract in FACTS.⁷ Within 30 days after executing an amendment⁸ to an existing contract, the state agency must update the information in FACTS.⁹

Citizen Support and Direct-support Organizations

¹ Section 288.901(2), F.S.

² Section 624.91, F.S.

³ Scripps Florida Funding Corporation has a board consisting of nine members and Enterprise Florida, Inc., has a board consisting of 21 appointed and ex officio members, but the board of directors may appoint at-large members at its discretion. *See* ss. 288.955(4) and 288.901(5), F.S.; *see also* SCRIPPS FLORIDA, available at <https://www.flgov.com/scripps-florida/> (last visited Mar. 14, 2021), and ENTERPRISE FLORIDA, About EFI, Board of Directors, available at <https://www.enterpriseflorida.com/about-efi/board-of-directors/> (last visited Mar. 14, 2021).

⁴ The H. Lee Moffitt Cancer Center and Research Institute must prepare annual financial audits. Section 1004.43(2), F.S.

⁵ The Florida Export Finance Corporation must submit an annual report to Enterprise Florida, Inc., and the Office of Financial Regulation must review the corporation's activities once every two years. Sections 288.7771 and 288.778, F.S.

⁶ Section 215.985, F.S.

⁷ The following information must be posted in FACTS: names of the contracting entities; procurement method used; start and end date of the contract; nature or type of commodities or services purchased; applicable contract unit prices and deliverables; total compensation to be paid or received under the contract; all payments made to the contractor to date; applicable contract performance measures; if a competitive solicitation was *not* used, the justification of such action; and electronic copies of the contract and procurement documents that must be redacted to exclude confidential or exempt information. Section 215.985(14)(a), F.S.

⁸ An amendment includes a renewal, termination, or extension of the contract or a modification to the terms of the contract. Section 215.985(14)(b), F.S.

⁹ Section 215.985(14)(a), F.S.

A citizen support organization (CSO) is an organization that is a Florida corporation not-for-profit incorporated under the provisions of Chapter 617, F.S., and is authorized by Florida law to benefit or provide assistance to a governmental entity.¹⁰ A CSO is organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer, in its own name, securities, funds, or real or personal property; and make expenditures for the benefit of the intergovernmental programs of their affiliated department or agency.

A direct-support organization (DSO) is an organization that is a Florida corporation not-for-profit incorporated under the provisions of Chapter 617, F.S., and is authorized by Florida law to benefit or provide assistance to a governmental entity.¹¹

The Office of Program Policy Analysis and Government Accountability

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is the research arm of the Legislature. OPPAGA provides data, evaluative research, and objective analyses to assist legislative budget and policy deliberations, and conducts research as directed by state law, the presiding officers, or the Joint Legislative Auditing Committee.¹²

Effect of the Bill

The bill establishes certain accountability, oversight, and transparency provisions applicable to all QPEs. The bill defines the term “quasi-public entity” as an entity established in law, regardless of form, for a public purpose or to effectuate a government program, and that is not directly controlled by a governmental entity.¹³ The term does not include a citizen support organization or a direct-support organization.¹⁴ The term "governmental entity" is defined to mean a state, regional, county, municipal, special district, or other political subdivision whether executive, judicial, or legislative. The term includes a department, division, bureau, commission, authority, district, or agency thereof, or public school, Florida College System institution, state university, or associated board.

Based on preliminary information received from OPPAGA, the following entities might be considered QPEs under the bill:

Entity	Statute	Date of Creation
Correctional Work Programs Corporation	S. 946.504, F.S	1983 (Ch. 83-209, L.O.F.)
Inland Protection Financing Corporation	S. 376.3071, F.S.	1986 (Ch. 86-159, L.O.F.)
Local Health Councils	S. 408.033(1)(a), F.S.	1987 (Ch. 87-92, L.O.F.)
Florida Birth-Related Neurological Injury Compensation Program	S. 766.315(1)(a), F.S.	1988 (Ch. 88-1, L.O.F.)
Florida Healthy Kids Corporation	S. 624.91(5), F.S.	1990 (Ch. 90-199, L.O.F.)
One Church, One Child of Florida Corporation	S. 409.1755, F.S.	1990 (Ch. 90-306, L.O.F.)
Enterprise Florida, Inc.	S. 288.901(1), F.S.	1992 (Ch. 92-277, L.O.F.)
Sunshine State One-Call of Florida, Inc.	S. 556.103, F.S.	1993 (Ch. 93-240, L.O.F.)
Florida Export Finance Corporation	S. 288.773, F.S.	1993 (Ch. 93-187, L.O.F.)
Florida Development Finance Corporation	S. 288.9604, F.S.	1993 (Ch. 93-187, L.O.F.)
Ounce of Prevention Fund of Florida	S. 409.153, F.S.	1998 (Ch. 98-175, L.O.F.)
Florida Mobile Home Relocation	S. 723.0611, F.S.	2001 (Ch. 2001-227, L.O.F.)

¹⁰ Section 20.2551, F.S.

¹¹ Section 16.618, F.S.

¹² The Office of Program Policy Analysis and Government Accountability, *See About OPPAGA, available at* <https://oppaga.fl.gov/About> (last visited March 17, 2021)

¹³ The term “governmental entity” means a state, regional, county, municipal, special district, or other political subdivision whether executive, judicial, or legislative, including, but not limited to, a department, division, bureau, commission, authority, district, or agency thereof, or public school, Florida College System institution, state university, or associated board.

¹⁴ Citizen support organizations (CSO) and direct-support organizations (DSO) are currently required by law to conduct audits if they meet an expenditure threshold. Each CSO and DSO with annual expenditures in excess of \$100,000 must have an annual financial audit conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the organization. Section 215.981(1), F.S.

Entity	Statute	Date of Creation
Corporation		
Florida Association of Drug Court Professionals	S. 397.334(7)(a), F.S.	2001 (Ch. 2001-48, L.O.F.)
Florida Clerks of Court Operations Corporation	S. 28.35(1), F.S.	2001 (Ch. 2001-48, L.O.F.)
Florida Education Fund, Inc.	S. 1009.70, F.S.	2002 (Ch. 2002-387, L.O.F.)
H. Lee Moffitt Cancer Center and Research, Inc.	S. 1004.43, F.S.	2002 (Ch. 2002-837, L.O.F.)
Scripps Florida Funding Corporation	S. 288.955, F.S.	2003 (Ch. 2003-420, L.O.F.)
Florida Institute for Human and Machine Cognition, Inc.	S. 1004.447, F.S.	2003 (Ch. 2003-387, L.O.F.)
Florida Public Health Institute, Inc.	S. 381.98, F.S.	2004 (Ch. 2004-2, L.O.F.)
Public Cord Blood Tissue Bank	S. 381.98, F.S.	2005 (Ch. 2005-305, L.O.F.)
Florida Opportunity Fund	S. 288.9624, F.S.	2007 (Ch. 2007-189, L.O.F.)
Florida Health Choices, Inc.	S. 408.910, F.S.	2008 (Ch. 2008-32, L.O.F.)
Institute for Commercialization of Florida Technology	S. 288.9625, F.S.	2013 (Ch. 2013-120, L.O.F.)
Florida is for Veterans, Inc.	S. 295.21, F.S.	2014 (Ch. 2014-1, L.O.F.)
Triumph Gulf Coast, Inc.	S. 288.8013, F.S.	2017 (Ch. 2017-64, L.O.F.)

Sunset of QPEs

The bill requires that each QPE established in law sunset at a time certain, unless the entity is reviewed and saved from repeal by the Legislature. For a QPE established in law on or after July 1, 2021, the bill requires the QPE to sunset on June 30 of the seventh year after enactment. For QPEs already established in law, the bill creates a tiered sunset scheme:

- QPEs created in law before July 1, 2000, sunset on June 30, 2025, unless reviewed and saved from repeal by the Legislature.
- QPEs created in law on or after July 1, 2000, but before July 1, 2021, sunset on June 30, 2026, unless reviewed and saved from repeal by the Legislature.

Affiliated Department

The bill requires each QPE to have an affiliated department.¹⁵ The affiliated department serves in an advisory capacity to the governing body of the QPE. The bill requires the head of the affiliated department to review the activities of the QPE at least annually and to make recommend statutory changes to the Legislature, as necessary, to ensure the most efficient and cost-effective operation of the entity. For QPEs already established in law, the Governor must assign each entity an affiliated department, unless a department is already specified in law, by December 31, 2021.

Cost-benefit Analysis

The bill requires each QPE to contract with an independent entity to conduct a cost-benefit analysis (CBA).¹⁶ The bill directs the Office of Program Policy Analysis and Government Accountability to create a list of entities qualified to conduct the CBA, and each QPE must select an entity from the list. The CBA must include the following elements:

- A detailed description of the QPE's activities;
- An analysis of the QPE's current performance, based on existing performance metrics;
- An analysis of the goals achieved by, and the advantages and disadvantages of, allowing the QPE to continue in its current form or be dissolved and have its functions transferred to a department;
- An analysis documenting the direct and indirect specific baseline costs, savings, efficiencies of scale, and qualitative and quantitative benefits involved in or resulting from maintaining the entity in its current form or transferring its duties to a department;

¹⁵ The term "department" means the principal administrative unit within the executive branch of government. Section 20.03(3), F.S.

¹⁶ The bill defines the term "cost-benefit analysis" to mean an analysis conducted by an independent entity of the current structure of a quasi-public entity and its relationship to state government with the goal of determining whether it would be more efficient or cost-effective to maintain the quasi-public entity or transfer its functions to a state agency and dissolve the entity.

- A description of the specific accountability and transparency measures by which the QPE must abide;
- A description of the specific performance standards, if any, that the QPE must meet to ensure adequate performance; and
- An operational audit, which must be conducted in accordance with government auditing standards.¹⁷

The CBA must be completed according to the following schedule:

- For QPEs created before July 1, 2000, the CBA must be completed no later than August 1, 2023, and every 10 years thereafter.
- For QPEs created on or after July 1, 2000, but before July 1, 2021, the CBA must be completed no later than August 1, 2024, and every 10 years thereafter.
- For QPEs created on or after July 1, 2021, the CBA must be completed by August 1 of the 10th year following its creation and every 10 years thereafter.

Once completed, the CBA must be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the affiliated department of the QPE by September 15 of the year in which the analysis is due.

Annual Report

The bill requires each QPE to submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and its affiliated department, by September 15 each year, that includes the following:

- The name, mailing address, physical address, telephone number, and website address of the QPE;
- The statutory authority creating the QPE;
- A description of the QPE's mission;
- A description of the plans of the QPE for the next three fiscal years;
- A copy of the QPE's code of ethics;
- If the QPE is a corporation not-for-profit, a copy of the entity's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax Form (Form 990);
- If the QPE is organized as a corporation, a copy of its corporate governance framework, the policies and practices of the corporation's committees and for directing senior management, and processes by which the board ensures proper oversight of the corporation's activities; and
- If the QPE has created an entity of any type with which it is affiliated, certain information regarding that entity.

QPE Website

The bill requires each QPE to maintain a publicly accessible website and requires the website to include the following information about the QPE:

- The annual report submitted to the Governor, Legislature, and its affiliated department;
- The most recently approved operating budget, which must be maintained on the website for two years;
- Position title and salary or rate of pay for each regularly established position;
- A link to any state audit or report of the entity's operations;
- A link to any program or activity descriptions for which funds may be expended;
- All meeting notices for meetings of the entity's governing body, which must be maintained on the website for two years; and
- The official minutes of each meeting of the entity's governing body, which must be posted no later than seven days after the date of the meeting in which the minutes are approved.

¹⁷ An "operational audit" is an audit whose purpose is to evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines. Such audits examine internal controls that are designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets, and identify weaknesses in those internal controls. Section 11.45(1)(i), F.S.

Salary Cap

The bill prohibits an employee of a QPE from receiving a salary, whether base pay or base pay combined with any bonus or incentive payments, in excess of 150 percent of the annual salary paid to the head of its affiliated department. The bill also prohibits a person who is employed by more than one QPE from receiving a cumulative annual salary in excess of the cap.

Other Requirements

In addition to the foregoing requirements, the bill does the following:

- Prohibits public funds given to a QPE from being used to retain a lobbyist to represent the entity before the legislative or executive branch; however, a full-time employee of the QPE may register as a lobbyist and represent the entity.
- Requires any meeting of the governing body of a QPE to be video recorded.
- Requires QPEs to post any contracts the entity has entered into, or amendments thereto, to FACTS in the same manner as state agencies.
- Prohibits the executive director of a QPE from being involved in the selection, appointment, or retention of any member of the entity's governing body.
- Prohibits a QPE from creating an entity separate from itself, including a citizen support organization or a direct-support organization, unless specifically authorized in law. The bill allows any such entity in existence before July 1, 2021, to remain in existence, but provides that it is repealed on the same date as the creating QPE unless reviewed and saved from repeal by the Legislature.

B. SECTION DIRECTORY:

Section 1 creates s. 20.059, F.S., relating to quasi-public entities.

Section 2 amends s. 215.985, F.S., relating to transparency in government spending.

Section 3 provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has no direct economic impact on the private sector as the entities addressed in the bill are created by government to fulfill a governmental purpose.

D. FISCAL COMMENTS:

The bill will likely have a minimal negative fiscal impact to state government expenditures. The bill requires each QPE to have an affiliated department to serve in an advisory role. The monitoring of each QPE might require a department to dedicate resources to monitoring and advising the QPE. The bill also requires QPEs to enter certain information into FACTS. Granting access to the system and additional upkeep on the system might require expenditures by the CFO. Lastly, since some QPEs are funded through state appropriations, the requirements of the bill – including conducting CBAs – might require those entities to expend state funds.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires contracts entered into by a QPE to be posted on the FACTS website, which is maintained by the CFO. Currently, the CFO has rulemaking authority over the provisions governing FACTS. As such, the CFO appears to have adequate rulemaking authority to implement the provisions in the bill related to FACTS.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.