

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1083 Quasi-public Entities

SPONSOR(S): State Affairs Committee, Public Integrity & Elections Committee, State Affairs Committee, Shoaf and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/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	13 Y, 0 N, As CS	Rubottom	Rubottom
3) State Affairs Committee	18 Y, 0 N, As CS	Toliver	Williamson

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 created in law on or after July 1, 2021, to sunset on June 30 of the seventh year after enactment.

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 requires that the salaries of QPE employees be published on the Florida Has a Right to Know Website. The bill prohibits the QPE 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 be video recorded.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1083e.SAC

DATE: 4/15/2021

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

Transparency Florida Act

The Transparency Florida Act (Act)⁶ requires the Governor, in consultation with the appropriations committees of the Senate and the House of Representatives, to maintain a central website providing access to all other websites required to be linked under the Act.⁷ It also requires certain budget information, certain contract information, and minimum functionality standards to be readily available online.

Florida Has a Right to Know website

The Department of Management Services (DMS) must establish and maintain a website, known as Florida Has a Right to Know, providing certain information relating to each employee or officer of a state agency, state university, or the State Board of Administration, regardless of the appropriation category from which the person is paid.⁸ For each employee or officer, the information must include, at a minimum, his or her:

- Name and salary or hourly rate of pay.

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 Codified at s. 215.985, F.S.

⁷ Section 215.985(3), F.S.

⁸ Section 215.985(6), F.S.

- Position number, class code, and class title.
- Employing agency and budget entity.⁹

Such information must be searchable by the employing entity, employee name, salary range, or class code and must be downloadable in a format that allows offline analysis.¹⁰

Florida Accountability Contract Tracking System

The Act also 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.¹¹ Within 30 days after executing an amendment¹² to an existing contract, the state agency must update the information in FACTS.¹³

Citizen Support and Direct-support Organizations

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.¹⁴ 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.¹⁵

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 under the direct control¹⁶ of a governmental entity.¹⁷ The term does not include a citizen support organization or a direct-support organization.¹⁸ The term “governmental entity” is defined to mean a state, regional, county, municipal, or special district entity, or other political subdivision whether executive, judicial, or legislative. The term includes a department, a division, a bureau, a commission, an authority, a district, or an agency

⁹ Section 215.985(6)(a), F.S.

¹⁰ Section 215.985(6)(b), F.S.

¹¹ 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.

¹² 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.

¹³ Section 215.985(14)(a), F.S.

¹⁴ Section 20.2551, F.S.

¹⁵ Section 16.618, F.S.

¹⁶ The term “direct control” means the ability to plan, direct, coordinate, and execute the powers, duties, and functions, and responsibilities of a QPE, including the ability to control, supervise, and manage the QPE’s daily operations. The term does not include the appointment of public officials or private persons to the governing body, regardless of appointment method, and does not include the approval of a plan of operations by a governmental entity.

¹⁸ 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.

thereof, or a public school, a Florida College System institution, a state university, or an associated board.

Based on preliminary information received from the Office of Program Policy Analysis and Government Accountability, the following entities are likely QPEs under the bill:

Entity	Statute	Date of Creation
Florida Insurance Guaranty Association	S. 631.55, F.S.	1970 (Ch. 70-20, L.O.F.)
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.)
Florida Engineers Management Corporation	S. 471.038, F.S.	1997 (Ch. 97-312, L.O.F.)
Ounce of Prevention Fund of Florida	S. 409.153, F.S.	1998 (Ch. 98-175, L.O.F.)
Florida Water Pollution Control Financing Corporation	S. 403.1837, F.S.	2000 (Ch. 200-128, L.O.F.)
Tobacco Settlement Financing Corporation	S. 215.56005, F.S.	2000 (Ch. 2000-128, L.O.F.)
Florida Mobile Home Relocation Corporation	S. 723.0611, F.S.	2001 (Ch. 2001-227, L.O.F.)
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.)
Florida Department of Transportation Financing Corporation	S. 339.0809, F.S.	2016 (Ch. 2016-181, 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 on or after July 1, 2021, to sunset on June 30 of the seventh year after enactment. Unless otherwise provided by general law, the bill provides that if a QPE is repealed, all of the assets and property owned by the QPE transfer to the state after payment of or other resolution of its indebtedness.

Affiliated Department

The bill requires each QPE to have an affiliated department.¹⁹ 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).²⁰ The independent entity must have at least five years of experience conducting comparable analyses of organizations that are similar in function to the QPE under review, must conduct the analysis in accordance with applicable industry best practices, and may not have any affiliation or financial involvement with the reviewed QPE. The bill requires the CBA to include the following elements:

- A detailed description of the QPE’s programs and activities, the goals and objectives of each program and activity, the problem or need that each program and activity was created to address, and the expected benefits of each program and activity.
- Revenues and costs of programs and activities using data from the previous three fiscal years, including the source of the QPE’s funding.
- An analysis of the QPE’s performance, including:
 - A description of the specific performance measures or standards that the QPE must meet to ensure adequate performance.
 - An evaluation of whether the QPE’s performance measures or standards are relevant, useful, and sufficient to evaluate the reasonableness of the cost of its programs and activities.
 - The performance of the QPE’s programs and activities based on existing performance measures or standards using data from the previous three fiscal years.
 - Factors that have contributed to any failure to achieve the QPE’s performance standards, including an explanation of why the standard was not achieved and any efforts the QPE has made to address the failure.
- A review of the delivery of services by the QPE, including alternative methods of providing the services, such as insourcing or privatization, that would reduce costs, improve performance, and enhance accountability.
- A comparison of similar services provided by state agencies, including similarities and differences in services, relative costs and efficiencies, and the possibilities for consolidating services.
- A comparison of similar services provided by state agencies, including similarities and differences in services, relative costs and efficiencies, and the possibilities for consolidating services.
- A copy of any operational audit conducted by the QPE, or on its behalf, in the three years before the CBA is due.²¹
- An analysis of the goals achieved by, and the advantages and disadvantages of, allowing a QPE to continue in its current form or be dissolved and have its duties and 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 QPE

¹⁹ The term “department” means the principal administrative unit within the executive branch of government. Section 20.03(3), F.S.

²⁰ 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.

²¹ 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.

in its current form or transferring the QPE's duties and functions to a department and dissolving the QPE.

- The extent to which the QPE goals and objectives have been achieved and whether the situation or issue that necessitated the creation of the QPE still exists.

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.
- 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.
- 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.

Salary Cap

The bill prohibits an employee of a QPE from receiving annual compensation, whether paid or accrued, regardless of contingency, in excess of 150 percent of the annual compensation paid to the head or executive director of its affiliated department, as applicable. The bill also prohibits a person who is employed by more than one QPE from receiving a cumulative annual compensation 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 and requires the video recording to be maintained for two years.
- Requires DMS to post the salary of QPE employees to the Florida Has a Right to Know website in the same manner as state agencies.
- 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 created on or after July 1, 2021, from creating an entity separate from itself, including a citizen support organization or a direct-support organization, unless specifically authorized in law.

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 requires DMS to enter the name, position, and salary information for employees of a QPE in the Florida Has a Right to Know website. Any fiscal impact to DMS can likely be absorbed within existing resources. 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

On April 9, 2021, the Public Integrity & Elections Committee adopted a strike all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Removed the sunset provision for quasi-public entities that exist in law before July 1, 2021.
- Revised the definition of quasi-public entity to specify that it includes entities that are not closely overseen by a governmental entity.
- Revised the requirements for the CBA to include additional information such as the revenue and costs of programs and activities and a comparison of similar services that are provided by state agencies.
- Removed the requirement that the Office of Program Policy Analysis and Government Accountability generate a list of entities qualified to perform the CBA and instead, established minimum criteria for the independent entity to meet.
- Required that the salaries of employees of each QPE be posted to the Florida Has a Right to Know website.
- Required QPEs to report their expenditures along with the budget.
- Required meetings of any committees of a QPE be recorded and all video recordings be maintained for at least two years.
- Provided that should a quasi-public entity be repealed its net assets will revert to the state after all debt is paid.

On April 15, 2021, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment made a technical change to the definition of “governmental entity” and provided additional specificity regarding the CBA.

The analysis is drafted to the committee substitute as passed by the State Affairs Committee.