

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 195 Fiscal Accountability for Nongovernmental Entities

SPONSOR(S): State Affairs Committee, Government Operations Subcommittee; Persons-Mulicka and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 506

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|------------------|----------|--|
| 1) Government Operations Subcommittee | 14 Y, 1 N, As CS | Toliver | Smith |
| 2) State Administration & Technology Appropriations Subcommittee | 12 Y, 0 N | Helpling | Topp |
| 3) State Affairs Committee | 20 Y, 0 N, As CS | Toliver | Williamson |

SUMMARY ANALYSIS

The Florida Single Audit Act (FSAA) establishes uniform state audit and accountability requirements for state financial assistance provided by state agencies to nonstate entities, which includes nonprofit and for-profit organizations. Current law also requires an agency agreement with a recipient or subrecipient of state or federal financial assistance to include certain provisions. Agency agreements do not include contracts procured by the state or contracts to operate state-owned or contractor-operated facilities.

The bill expands the list of provisions that must be included in an agency agreement with a recipient or subrecipient of state or federal funds and that is a nonprofit or for-profit organization. The agency agreement must include a provision specifying that funds will only be expended in accordance with their stated purpose and for the benefit of the public, prohibiting the funds from being loaned to another entity for any purpose or donated as charitable or political contributions, prohibiting the funds from being used for bonuses or severance payments to employees of the organization, and prohibiting the funds from being used to retain a lobbyist.

The bill requires a nonprofit organization or a for-profit organization that derives at least 50 percent of its revenue from federal or state funds and that enters into an agency agreement to submit to certain audits. The amount of funds received and the length of time over which they are received determines the type of audit required.

The bill also requires a nongovernmental entity, which is defined as a nonprofit corporation, that receives at least 50 percent of its revenue from a governmental entity, or expends at least \$750,000 of government funds in any fiscal year, to annually submit a report to the Department of Management Services (DMS) that lists the name, position, and total annual compensation of each director, board member, chief executive officer, chief financial officer, and chief operating officer. DMS must post the information on the Florida Has a Right to Know website and the nongovernmental entity must post the information on its website, if it has a website. Before receiving any government funds, a nongovernmental entity must attest that it has either received funding above the applicable thresholds in the previous year and submitted a report to DMS or that it has not received funding meeting those thresholds and therefore, is not required to submit a report. A governmental entity may not transfer funds to a nongovernmental entity until it has complied with the reporting and attestation requirements.

Finally, the bill prohibits a nongovernmental entity from expending more than 15 percent of state-appropriated funds, including state-appropriated federal funds, on administrative expenses. Furthermore, a nongovernmental entity that receives funds from private entities must first use the private funds for administrative expenses before using any state-appropriated funds, including state-appropriated federal funds.

The bill may have an insignificant negative fiscal impact on DMS for reporting requirements required in the bill. The bill may have an indeterminate negative fiscal impact on private sector organizations. See Fiscal Analysis and Economic Impact Statement.

FULL ANALYSIS

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

STORAGE NAME: h0195d.SAC

DATE: 4/15/2021

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Single Audit Act (FSAA)

The FSAA establishes uniform state audit and accountability requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects.¹ The FSAA is intended to closely parallel the Federal Single Audit Act. Under the FSAA, nonstate entities include nonprofit organizations, for-profit organizations, local government entities, and higher education entities.²

The FSAA is designed to:

- Establish uniform state audit requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects.
- Promote sound financial management, including effective internal controls, with respect to state financial assistance administered by nonstate entities.
- Promote audit economy and efficiency by relying to the extent possible on already required audits of federal financial assistance provided to nonstate entities.
- Provide for identification of state financial assistance transactions in the state accounting records and recipient organization records.
- Promote improved coordination and cooperation within and between affected state agencies providing state financial assistance and nonstate entities receiving state assistance.
- Ensure, to the maximum extent possible, that state agencies monitor, use, and follow-up on audits of state financial assistance provided to nonstate entities.³

Pursuant to the FSAA, certain entities that meet the “audit threshold” requirements are subject to a state single audit or a project-specific audit.⁴ Currently, the “audit threshold” requires each nonstate entity that expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year to have a state single audit, or a project-specific audit, for such fiscal year.⁵

Agency Agreements Funded with Federal and State Assistance

Current law requires an agency agreement that provides state financial assistance⁶ to a recipient⁷ or subrecipient,⁸ or that provides federal financial assistance⁹ to a subrecipient, to include a provision specifying a scope of work that clearly establishes the tasks the recipient or subrecipient is required to perform, and a provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the agency before payment. Each deliverable must be directly related to the scope of work and must specify the required minimum level of service to be performed

¹ Section 215.97, F.S.

² Section 215.97(2)(m), F.S.

³ Section 215.97(1), F.S.

⁴ Section 215.97(2)(a), F.S.

⁵ *Id.*

⁶ The term “state financial assistance” means state resources, not including federal financial assistance and state matching on federal programs, provided to a nonstate entity to carry out a state project. “State financial assistance” includes the types of state resources stated in the rules of the Department of Financial Services established in consultation with all state awarding agencies. State financial assistance may be provided directly by state awarding agencies or indirectly by nonstate entities. “State financial assistance” does not include procurement contracts used to buy goods or services from vendors and contracts to operate state-owned and contractor-operated facilities. Section 215.97(2)(r), F.S.

⁷ The term “recipient” means a nonstate entity that receives state financial assistance directly from a state awarding agency. Section 215.97(2)(o), F.S. The term “nonstate entity” means a local governmental entity, higher education entity, nonprofit organization, or for-profit organization that receives state financial assistance. Section 215.97(2)(n), F.S.

⁸ The term “subrecipient” means a nonstate entity that receives state financial assistance through another nonstate entity. Section 215.97(2)(y), F.S.

⁹ The term “federal financial assistance” means financial assistance from federal sources passed through the state and provided to nonstate organizations to carry out a federal program. “Federal financial assistance” includes all types of federal assistance as defined in applicable United States Office of Management and Budget circulars. Section 215.97(1)(f), F.S. *See also* 2 C.F.R. Part 200.

and the criteria for evaluating the successful completion of each deliverable.¹⁰ Additionally, each agency agreement must include the following:

- A provision specifying the financial consequences that apply if the recipient or subrecipient fails to perform the minimum level of service required in the agreement. The provision can be excluded in specified situations.
- A provision specifying that a recipient or subrecipient of federal or state financial assistance may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.
- A provision specifying that any balance of unobligated funds that has been advanced or paid must be refunded to the state agency.
- A provision specifying that any funds paid in excess of the amount to which the recipient or subrecipient is entitled must be refunded to the state agency.
- Any additional information required by the FSAA.¹¹

Agency agreements involving the receipt of state or federal financial assistance do not include contracts procured by the state to buy goods or services from vendors or contracts to operate state-owned or contractor-operated facilities.¹²

Transparency Florida Act

The Transparency Florida Act (Act)¹³ 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.¹⁴ It also requires certain budget information, certain contract information, and minimum functionality standards to be readily available online.

The Department of Management Services (DMS) must establish and maintain a website 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.¹⁵ For each employee or officer, the information must include, at a minimum, his or her:

- Name and salary or hourly rate of pay.
- Position number, class code, and class title.
- Employing agency and budget entity.¹⁶

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.¹⁷

¹⁰ See s. 215.971, F.S.

¹¹ Section 215.971(1), F.S.

¹² See s. 215.97(1)(r), F.S.; see also 2 C.F.R. §§ 200.38(d) and 200.40(d), which define “federal financial assistance” and “federal award.” The term “federal financial assistance” means grants, cooperative agreements, non-cash contributions or donations of property, direct appropriations, and other financial assistance. The term “federal award,” which specifically includes federal financial assistance, excludes contracts that a federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government owned, contractor operated facilities.

¹³ Codified at s. 215.985, F.S.

¹⁴ Section 215.985(3), F.S.

¹⁵ Section 215.985(6), F.S.

¹⁶ Section 215.985(6)(a), F.S.

¹⁷ Section 215.985(6)(b), F.S.

Effect of the Bill

The bill modifies the list of provisions that must be included in an agency agreement with a nonprofit organization or a for-profit organization that is a recipient or subrecipient of state financial assistance, or a subrecipient of federal financial assistance. Specifically, the agency agreement must include a provision:

- Specifying that funds will only be expended in accordance with their stated purpose and for the benefit of the public.
- Prohibiting the funds from being loaned to another entity for any purpose or donated as charitable or political contributions.
- Prohibiting the funds from being used for bonuses, exit bonuses, incentive payments, or severance payments to employees of a nonprofit organization or a for-profit organization, except in certain instances.
- Prohibiting the funds from being used to retain a lobbyist to represent the nonprofit organization or for-profit organization before the legislative or executive branch. However, a full-time employee of a nonprofit organization may register as a lobbyist for the organization and be paid using public funds.

The bill requires such nonprofit organization or such for-profit organization that derives at least 50 percent of its revenue from federal or state funds, not including the receipt of Medicaid funds, and that enters into an agency agreement to submit to the following audits, which are due no later than six months after the entity's specified fiscal year:

- If the organization receives \$150,000 or more in state or federal financial assistance each year for three consecutive fiscal years, then the organization must have a financial audit¹⁸ conducted every three years.
- If the organization receives \$300,000 or more in state or federal financial assistance each year for five consecutive fiscal years, then the organization must have an operational audit¹⁹ conducted every five years.
- If the organization receives \$500,000 or more in state or federal financial assistance each year for seven consecutive fiscal years, then the organization must have a performance audit²⁰ conducted every seven years.

¹⁸ A "financial audit" is an examination of financial statements in order to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements. Financial audits must be conducted in accordance with auditing standards generally accepted in the United States and government auditing standards. When applicable, the scope of financial audits must encompass the additional activities necessary to establish compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. ss. 7501-7507, and other applicable federal law. Section 11.45(1)(d), F.S.

¹⁹ 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. Operational audits must be conducted in accordance with government auditing standards. Operational 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.

²⁰ A "performance audit" is an examination of a program, activity, or function of a governmental entity, conducted in accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. A performance audit includes an examination of issues related to:

1. Economy, efficiency, or effectiveness of the program.
2. Structure or design of the program to accomplish its goals and objectives.
3. Adequacy of the program to meet the needs identified by the Legislature or governing body.
4. Alternative methods of providing program services or products.
5. Goals, objectives, and performance measures used by the agency to monitor and report program accomplishments.
6. The accuracy or adequacy of public documents, reports, or requests prepared under the program by state agencies.
7. Compliance of the program with appropriate policies, rules, or laws.
8. Any other issues related to governmental entities as directed by the Legislative Auditing Committee.

The financial audit and operational audit must be conducted by an independent auditor in accordance with auditing standards stated in the rules of the Auditor General. In the case of a performance audit, the audit must be conducted by an independent entity with at least five years of experience conducting performance audits. The independent entity must conduct audits using applicable auditing or evaluation standards from authoritative bodies, follow industry best practices, and may not have any affiliation or financial involvement in the reviewed organization.

The audit requirements do not apply to a citizen support organization or a direct-support organization created or authorized pursuant to law.²¹

The bill requires a nongovernmental entity²² that receives at least 50 percent of its revenue from a governmental entity, or expends at least \$750,000 of government funds in any fiscal year, to submit a report to DMS each year that lists the name, position, and all compensation earned or awarded, whether paid or accrued, regardless of contingency to each director, board member, chief executive officer, chief financial officer, chief operating officer, or other person performing equivalent functions. The chief executive officer or chief financial officer of the entity must verify²³ the report, which is due each December 31. DMS must post the submitted information on the Florida Has a Right to Know website. In addition, the nongovernmental entity must post the information on its website if it maintains a website.

Before receiving any government funds, a nongovernmental entity must attest that it has either received funding above the applicable thresholds in the previous year and has submitted the required report to DMS or that it has not received funding meeting those thresholds and therefore, is not required to submit a report. A governmental entity is prohibited from expending or transferring funds to a nongovernmental entity until it has complied with the reporting and attestation requirements.

The bill prohibits a nongovernmental entity from expending more than 15 percent of state-appropriated funds, including state-appropriated federal funds, on administrative expenses. Further, a nongovernmental entity that receives funds from private entities must first use the private funds for administrative expenses before using any state-appropriated funds, including state-appropriated federal funds. The bill defines the term “administrative expenses” to mean expenditures that are considered indirect operating costs of a nongovernmental entity, including general administration and general expenses, equipment and capital improvement, and operations and maintenance expenses. General administration costs include accounting, support services, and personnel, including all compensation earned or awarded to such personnel, whether paid or accrued, regardless of contingency, unless the compensation is explicitly included in the General Appropriations Act or the compensation relates to the employment of an employee whose services are integral to a project or activity of the nongovernmental entity. However, the bill clarifies that compensation earned by, or awarded to a director, board member, chief executive officer, chief financial officer, chief operating officer, or other person performing equivalent functions, whether paid or accrued, regardless of contingency, cannot be considered integral to a project or activity of a nongovernment entity.

B. SECTION DIRECTORY:

Section 1 amends s. 215.971, F.S., relating to agreements funded with federal or state assistance.

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

²¹ 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.

²² For purposes of these provisions, a “nongovernmental entity” means a nonprofit corporation that receives financial assistance from a governmental entity. Current law defines a “governmental entity” as 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. Section 215.985(2)(c), F.S.

²³ Verification of a document may be accomplished under oath or affirmation taken or administered before a judge, clerk, deputy clerk, law enforcement officer, correctional officer, or correctional probation officer. Section 92.525(1), F.S.

Section 3 creates s. 215.986, F.S., relating to restrictions on administrative expenses for certain nongovernmental entities.

Section 4 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:

The bill may have an insignificant negative fiscal impact on DMS to annually enter the name, position, and salary information for specified officers of certain nonprofit corporations. Any fiscal impact can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on private sector organizations. The bill requires nonprofit corporations and for profit corporations that enter into agreements with agencies and receive state or federal financial assistance to submit an annual report to DMS and to conduct certain audits. In addition, the bill prohibits nonprofit corporations from using more than 15 percent of the state-appropriated funds, including state-appropriated federal funds, for administrative expenses.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2021, the Government Operations Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from HB 195 in that it:

- Changed the types of entities that must submit an annual salary report to DMS from public or private entities to nongovernmental entities, which the bill defines as nonprofit corporations that receive financial assistance from a governmental entity.
- Revised the threshold an entity must reach to be required to submit an annual salary report from \$50,000 or more received from state or federal funds in a year to either receipt of at least 50 percent of its revenue from governmental entities or expenditures of \$750,000 in state funds in a fiscal year.
- Changed the officers that must be included in the annual salary report from executives, managerial personnel, and board members to directors, board members, chief executive officers, chief financial officers, and chief operating officers.
- Required nongovernmental entities to post the reported salary information on their website, if the entity maintains a website.
- Required each nongovernmental entity to attest that it has complied with the annual salary report requirement before receiving funds from a governmental entity and prohibited a governmental entity from transferring such funds without the attestation.
- Prohibited nongovernmental entities from expending more than 15 percent of state-appropriated funds, including state-appropriated federal funds, on administrative expenses.
- Expanded the list of provisions that must be included in an agency agreement with a recipient or subrecipient of state or federal funds and that is a nonprofit or for-profit organization.
- Required a nonprofit organization or a for-profit organization that derives at least 50 percent of its revenue from federal or state funds and that enters into an agency agreement to submit to certain audits.

On April 15, 2021, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment changed the following:

- Specified that federal or state financial assistance does not include the receipt of Medicaid funds for purposes of determining whether a nonprofit or for-profit organization must conduct certain audits.
- Removed the requirement that the Office of Program Policy Analysis and Government Accountability generate a list of independent entities qualified to conduct performance audits and instead, requires the independent entity to meet specified criteria.
- Revised the definition of “administrative expenses” to mean general administration expenses, including employee salaries unless the employee is rendering services that are integral to a project or activity of the nonprofit corporation. The definition also includes equipment and capital improvement and operations and maintenance expense.

This analysis is drafted to the committee substitute adopted by the State Affairs Committee.