

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 Governmental Oversight and Accountability

BILL: SB 506

INTRODUCER: Senator Garcia

SUBJECT: Transparency in Government Spending

DATE: March 16, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Candelaria	McVaney	GO	Pre-meeting
2. _____	_____	AP	_____
3. _____	_____	RC	_____

I. Summary:

SB 506 requires the Department of Management Services (DMS) to include on its Florida Has a Right to Know website¹ the name, total annual compensation, and monetary and nonmonetary benefits of executives, board members, and managerial personnel of any organization or other public or private entity receiving funding in the annual aggregate of \$50,000 or more from any state trust fund, the General Revenue Fund, or any funds allocated from the Federal Government by February 1, 2022.

Any such organization or entity must provide the data to the DMS by December 31 of the calendar year in which the funds are received by the organization or entity. An organization or entity providing salary and benefit data to the DMS must also post the data on its own website. Failure by an organization or entity to meet the requirements results in the loss of any additional funding from the state until compliance is met.

The DMS, cities, counties, and school districts may experience additional workload to comply with the reporting requirements.

The bill takes effect July 1, 2021.

II. Present Situation:

Transparency Florida Act

Section 215.985, F.S., is referred to as the Transparency Government Act (the Act). The Act mandates the Executive Office of the Governor, in consultation with the appropriations committees of the Senate and the House of Representatives, to establish and maintain a single

¹ <https://www.floridahasarighttoknow.myflorida.com/> (last visited March 12, 2021); See Section 215.985(6), F.S.

website that provides access to all other websites required under s. 215.985, F.S. The single website, and other websites must:

- Be constructed for usability and provide an intuitive user experience;
- Provide a consistent visual design, interaction or navigation design and information or data presentation;
- Be deployed in compliance with the Americans with Disabilities Act; and
- Be compatible with all major web browsers.

The outcome of this requirement has been the single webpage known as “Transparency Florida,”² an initiative to ensure accountability in how the state spends its money. The Transparency Florida website allows for Florida citizens to view state budgets, payments, and contracts in order to hold state government accountable. The website provides links to:

- State Financials (Budget, Spending and related information);
- State Payments;
- Florida State Contract Search (FACTS);
- State Contract Audits;
- State Economic Incentives Program;
- Quasi Government Spending;
- Estimated state taxes paid based on income;
- State Financial Reports;
- Local Government Financial Reporting; and
- State Employee Data (Florida Has a Right to Know).

Florida Fiscal Portal

Section 215.985(5), F.S., requires the Executive Office of the Governor to establish and maintain a website that provides information relating to fiscal planning for the state.³ This website is known as the “Florida Fiscal Portal” and houses a collection of documents that detail the fiscal status of the state. The website includes agency legislative budget requests, the long-range financial outlook, Governor’s budget recommendation, and other fiscal publications.⁴ The Office of Policy and Budget in the Executive Office of the Governor ensures all data added to the website remains accessible to the public for 10 years.

Florida Has a Right to Know Website

The DMS is required to maintain a website that provides current information regarding each employee of a state agency, state university, or the State Board of Administration, regardless of the appropriation category.⁵ This website, known as the “Florida Has a Right to Know,” provides current information relating to each employee or officer including the:

- Name;
- Salary or hourly rate of pay;

² Department of Financial Services, *Transparency Florida*, available at <https://www.myfloridacfo.com/Transparency/> (last visited, February 25, 2021).

³ Section 215.985(5), F.S.

⁴ Florida Fiscal Portal, available at <http://floridafiscalportal.state.fl.us/Home.aspx>, (last visited February 25, 2021)

⁵ Section 215.985(6), F.S.

- Position number, class code, and class title; and
- Employing agency and budget entity.⁶

The information must be searchable by state agency, state university, Florida College System Institution, and the State Board Administration, and by employee name, salary range, or class code, and must be downloadable in a format that allows offline analysis.⁷

Florida Accountability Contract Tracking System

The Chief Financial Officer is required to establish and maintain a secure contract tracking system available for viewing and downloading by the public through a secure website.⁸ The Department of Financial Services (DFS) maintains and updates the contract tracking system. The tracking system contains contracts, grant awards, and amendments to contracts.

Within 30 days after executing a contract, each state entity is required to post the following information relating to the contract on the contract tracking system:

- The names of the contracting entities;
- The procurement method;
- The contract beginning and ending dates;
- The 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 to procure the goods and services, the justification of the action, including citation to a statutory exemption from competitive solicitation if any;⁹ and
- Electronic copies of the contract and procurement documents that have been redacted to exclude confidential information or exempt information.

Within 30 calendar days after an amendment to an existing contract, the state entity that is a party to the contract must update the information on the contract tracking system.

Records made available on the contract tracking system may not reveal information made confidential or exempt by law. Each state entity that is a party to a contract must redact confidential and exempt information from the contract and procurement documents before posting an electronic copy on the contract tracking system.¹⁰ A request to redact confidential and exempt information must be made in writing and delivered by mail, facsimile, electronic transmission, or in person to the state entity. The CFO, and the DFS, or an employee thereof, is not responsible for redacting confidential or exempt information contained on the system or the failure of a state entity to redact the confidential or exempt information. The CFO may regulate and prohibit the posting of records that could facilitate identity theft or fraud. Such action by the

⁶ Paragraph 215.985(6)(a), F.S.

⁷ Section 215.985(6)(b), F.S.

⁸ Section 215.985(14)

⁹ Section 215.985(14)(a)

¹⁰ Section 215.985(14)(d), F.S.

CFO does not supersede the duty of a public entity to provide a copy of a public record upon request.¹¹

III. Effect of Proposed Changes:

Section 1 amends s. 215.985, F.S., to require the DMS's Florida Has a Right to Know website to include the name, total annual compensation, and monetary and nonmonetary benefits of all executives, managerial personnel, and board members of any organization or any public or private entity that receives funding in the aggregate amount of \$50,000 or more from the state by February 1, 2022. Any such entity that qualifies must provide the data to the DMS by December 31 of the calendar year the funds are received. The entity or organization must also provide the required information on its own public website.

The bill appears to apply to cities, counties, school districts, and other public and private entities that received at least \$50,000 of state funds.

The bill disqualifies an entity or an organization who is not in compliance with the requirements of the bill from receiving any additional funding from the state.

Section 2 provides that the bill take effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, subsection (a) of section 18 of the State Constitution provides that cities and counties are not bound by general laws requiring them to spend funds or take action that requires the expenditure of funds unless certain specified exemptions or exceptions are met.

Cities and counties who receive at least \$50,000, will incur costs relating to complying with the bill's reporting requirements. Under the bill, a city or county who fails to comply with the reporting requirement may not receive any additional funding from the state until compliance is met.

The mandate requirements do not apply to laws having an insignificant impact which, for Fiscal Year 2020-2021, is forecast at \$2.2 million.^{12,13,14} The fiscal impact of this bill on cities or counties is indeterminate. If costs imposed by the bill are determined to exceed \$2.2 million in the aggregate, the bill may be binding on cities and counties if the bill

¹¹ Section 215.985(14)(f), F.S.

¹² FLA. CONST. art. VII, s. 18(d).

¹³ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited February 25, 2021).

¹⁴ Based on the Florida Demographic Estimating Conference's November 3, 2020, population forecast for 2021 of 21,830,364. The conference packet is available at: <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited February 25, 2021).

contains a finding of important state interest and meets one of the exceptions specified in State Constitution (e.g., applies to all persons similarly situated or enactment by vote of two-thirds of the membership of each house).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private entities may incur costs associated with providing the agency overseeing compliance with the required information. These entities will also be responsible for the costs associated with making the required information available on their websites for the public to see.

C. Government Sector Impact:

The bill appears to apply the reporting requirements to cities, counties, school districts, state colleges, state universities, etc. In complying with the reporting requirements, the governmental entities may incur additional workload.

The bill will have an indeterminate negative fiscal impact on DMS in processing and posting the data provided by applicable entities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill as currently drafted does not appear to provide for adequate procedural due process. Noncompliant entities or organizations are not provided notice or an opportunity to be heard prior to removal of funding.

The bill does not specify what agency has the authority to enforce compliance. Additionally, the bill does not establish a reporting requirement or other mechanisms for how the prohibition on funding is triggered.

The bill requires an “organization or other public or private entity” that meets a certain criteria to submit salary and benefit information to the DMS. It is unclear whether an individual receiving state funds via a grant, or as otherwise provided in the bill, in excess of \$50,000 is required to submit salary and benefit information for that individual. If it is the Legislature’s intent to broaden the classification of those needing to adhere to the requirements of the bill, then consideration of an amendment to replace “organization” with “person”, as defined in s. 1.01(3), F.S., may be needed to clarify the intent of the bill. Section 1.01(3), F.S., defines the term “person” to mean:

Individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

VIII. Statutes Affected:

This bill substantially amends s. 215.985 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.