

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 Rules

BILL: CS/SB 506

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Garcia

SUBJECT: Transparency in Government Spending

DATE: April 19, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Candelaria</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Sadberry</u>	<u>AP</u>	<u>Favorable</u>
3.	<u>Candelaria</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 506 requires a nongovernmental entity that receives at least 50 percent of its annual revenue from state funds or that receives \$750,000 or more from state funds in a fiscal year to submit a report to the Department of Management Services (DMS) by January 15 of each year that includes the name, position, and total annual compensation of, including bonuses, exit bonuses, accrued paid time off, severance payments, and incentive payments paid to, each director, board member, chief executive officer, chief financial officer, chief operating officer, or any other person performing equivalent functions. The report must be verified by a director, board member, chief executive officer, chief financial officer, or chief operating officer of the nongovernmental entity.

The bill provides definitions for the terms “nongovernmental entity” and “state funds.”

The bill requires the DMS to include on its Florida Has a Right to Know website the information reported by the nongovernmental entities beginning February 1, 2022, and annually thereafter.

The bill requires a nongovernmental entity to post the reported information on its own website, if the nongovernmental entity maintains a website.

The bill provides that, before receiving funds from a governmental entity, a nongovernmental entity that received state funds in the previous year must submit to the governmental entity an attestation verifying that the nongovernmental entity has submitted the required report. A

nongovernmental entity that did *not* receive state funds in the previous year must submit, before receiving funds from a governmental entity, to the governmental entity an attestation verifying that the nongovernmental entity did not receive funding in the previous year.

The bill establishes that, beginning January 15, 2022, a governmental entity may not expend, transfer, or distribute funds to a nongovernmental entity until the nongovernmental entity has complied with the reporting and posting requirements. This prohibition is applicable to payments associated with contracts executed, amended, extended, or renewed on or after July 1, 2021, and any transfers or distributions authorized on or after July 1, 2021.

The bill will have an indeterminate negative fiscal impact. *See* Part V, Fiscal Impact Statement.

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 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.
- Be compatible with all major web browsers.

The outcome of this requirement has been the single webpage known as “Transparency Florida,”¹ 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).

¹ Department of Financial Services, *Transparency Florida*, available at <https://www.myfloridacfo.com/Transparency/> (last visited Apr. 5, 2021).

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.² 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, the Governor’s budget recommendation, and other fiscal publications.³ 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 or officer of a state agency, a state university, a Florida College System institution, or the State Board of Administration, regardless of the appropriation category.⁴ This website, known as “Florida Has a Right to Know,” provides current information relating to each employee or officer including the:

- Name;
- Salary or hourly rate of pay;
- Position number, class code, and class title; and
- Employing agency and budget entity.⁵

The information must be searchable by state agency, state university, Florida College System institution, and State Board Administration, and by employee name, salary range, or class code, and must be downloadable in a format that allows offline analysis.⁶

Florida Accountability Contract Tracking System

The Chief Financial Officer (CFO) is required to establish and maintain a secure contract tracking system available for viewing and downloading by the public through a secure website.⁷ 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;

² Section 215.985(5), F.S.

³ Florida Fiscal Portal, available at <http://floridafiscalportal.state.fl.us/Home.aspx> (last visited Apr. 5, 2021).

⁴ Section 215.985(6), F.S.

⁵ Section 215.985(6)(a), F.S.

⁶ Section 215.985(6)(b), F.S.

⁷ Section 215.985(14), F.S.

- 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; and
- Electronic copies of the contract and procurement documents that have been redacted to exclude confidential information or exempt information.⁸

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.⁹ 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 CFO does not supersede the duty of a public entity to provide a copy of a public record upon request.¹⁰

Verification of Documents

Section 92.525, F.S., specifies that the requirement that a document be verified means that the document must be signed or executed by a person and that the person must state under oath (affirmation) that the facts or matters stated or recited in the document are true or other words to that effect. A document may be verified in three ways:

- Under oath or affirmation taken or administered before an officer authorized under s. 92.50, F.S., to administer oaths;
- Under oath or affirmation taken or administered by an officer authorized under s. 117.10, F.S., to administer oaths; or
- By the signing of the written declaration prescribed in s. 92.525(2), F.S.^{11,12}

III. Effect of Proposed Changes:

Section 1 amends s. 215.985, F.S., to expand transparency in government spending.

⁸ Section 215.985(14)(a), F.S.

⁹ Section 215.985(14)(d), F.S.

¹⁰ Section 215.985(14)(f), F.S.

¹¹ Section 92.525(2), F.S., provides that a written declaration means the following statement: “Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true,” followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words “to the best of my knowledge and belief” may be added. The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.

¹² Section 92.525(1), F.S.

The term “nongovernmental entity” is defined as a nonprofit corporation.

The term “state funds” is defined to mean funds paid from the General Revenue Fund or any state trust fund, funds allocated by the Federal Government and distributed by the state, or funds appropriated by the state for distribution through any grant program.

This section requires a nongovernmental entity that receives at least 50 percent of its annual revenue, calculated using the nongovernmental entity’s fiscal year, from state funds or that receives \$750,000 or more from state funds in a fiscal year, to submit a report to the DMS by January 15 of each year that lists the name, position, and total annual compensation of, including bonuses, exit bonuses, accrued paid time off, severance payments, and incentive payments paid to each director, board member, chief executive officer, chief financial officer, chief operating officer, or any other person performing equivalent functions of the nongovernmental entity. The report must be verified as provided in s. 92.525, F.S., by a director, board member, chief executive officer, chief financial officer, or chief operating officer of the nongovernmental entity. Beginning February 1, 2022, and annually thereafter, the DMS must post the submitted information on its Florida Has a Right to Know website. In addition, the nongovernmental entity must post the same information on its own website if it maintains a website.

Before receiving funds from a governmental entity, a nongovernmental entity must attest that it has received state funds above the applicable thresholds in the previous year and has submitted the report required to the DMS, or that it did not receive funding meeting those thresholds in the previous year.

Beginning January 15, 2022, a governmental entity may not expend, transfer, or distribute funds to a nongovernmental entity until the nongovernmental entity has complied with the requirements of the bill. This prohibition is applicable to payments associated with contracts executed, amended, extended, or renewed on or after July 1, 2021, and any transfers or distributions authorized on or after July 1, 2021.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will have an indeterminate fiscal impact on private sector organizations. A nonprofit corporation may experience costs associated with complying with the reporting requirement and including the reported information on its own website, if it maintains one. Further, nongovernmental entities will incur additional workload and costs associated with verifying the attestation being submitted to the affiliated governmental entity.

C. Government Sector Impact:

The DMS will incur additional workload and associated costs resulting from the processing and posting of the data provided by nongovernmental entities. The DMS estimates costs, based on current technology spending for the Florida Has a Right to Know website, will result in a net increase of at least \$1,000 annually to maintain the data on the portal.¹³

The bill prohibits governmental entities from expending, transferring, or distributing funds to a nongovernmental entity that is in noncompliance with the requirements of the bill. Governmental entities will experience increased workload and associated costs relating to the determination or confirmation of a nongovernmental entity's compliance before expending, transferring, or distributing funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill as currently drafted does not appear to provide to noncompliant nongovernmental entities notice or an opportunity to be heard prior to the suspension of funding.

¹³ Department of Management Services, *2021 Agency Legislative Bill Analysis for CS/SB 506*, at 4 (Mar. 22, 2021) (on file with the Senate Subcommittee on Agriculture, Environment, and General Government).

VIII. Statutes Affected:

This bill substantially amends section 215.985 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on March 17, 2021:

The CS:

- Provides a definition for “nongovernmental entity” and “state funds.”
- Requires a nonprofit corporation that receives at least 50 percent of its annual revenue from state funds or that receives \$750,000 or more from state funds in a fiscal year, to submit to the DMS a report providing compensation information of the nongovernmental entities executives.
- Requires the DMS to include on the Florida Has a Right to Know website the information provided by the nongovernmental entity.
- Requires nongovernmental entities, before they receive funds from a governmental entity, to submit to the governmental entity an attestation verifying whether or not the nongovernmental entity submitted the required report if they received funding the previous year.
- Requires nongovernmental entities, before they receive funds from a governmental entity, which did not receive funding in the previous year, to submit to the governmental entity an attestation verifying that the nongovernmental entity did not receive funding in the previous year.
- Prohibits governmental entities from expending, transferring, or distributing funds to a nongovernmental entity until the nongovernmental entity has complied with the reporting requirements.
- Establishes that the provisions of the bill are applicable to payments associated with contracts executed, amended, extended, or renewed on or after July 1, 2021.

- B. **Amendments:**

None.