

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 1446

INTRODUCER: Senator Rouson

SUBJECT: Pay-for-success Contracts

DATE: March 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Ferrin	GO	Favorable
2.			HP	
3.			AP	
4.			RC	

I. Summary:

SB 1446 authorizes a state agency, contingent upon authorization in the General Appropriations Act, to negotiate and enter into a pay-for-success contract with a private entity. The bill defines the terms “pay-for-success contract,” “private entity,” and “success payment.”

The bill specifies the duties of the state agency for a pay-for-success contract. An independent evaluator must determine whether the outcome measures have been met under the contract, and the private entity must report annually to the state agency. Funding obtained under this program is not considered a procurement item under s. 287.057, F.S.

Contingent upon authorization in the General Appropriations Act, the Department of Health is authorized to implement the Nurse-Family Partnership pay-for-success contract as an evidence-based practice model or provider.

The bill provides a nonrecurring appropriation of \$850,000 from the General Revenue Fund for the 2017-2018 fiscal year to the Department of Health, to support existing infrastructure and implementation of the Nurse-Family Partnership model in designated healthy start coalition and federally qualified health centers.

By December 1, 2017, the Department of Management Services (DMS) must prescribe the procedures to be used by state agencies in connection with pay-for-success contracts.

The bill takes effect on July 1, 2017.

II. Present Situation:

Pay-for-Success Contract Program

A pay-for-success program allows a governmental entity to enter into contracts with private non-profit organizations to provide targeted services. Initial funding for these services is provided by private investors. When a performance measure outcome identified in the contract is achieved, as recognized by an independent evaluator, the governmental entity makes a “success payment.” The amount of the success payment is specified in the contracts, but presumably covers the costs of the services plus some level of return on the initial investment made by private investors.¹

Nurse-Family Partnership of Florida

The Nurse-Family Partnership of Florida (NFP) is an evidence-based, community health program that serves low-income, high-risk women pregnant with their first child.² Each mother is partnered with a registered nurse early in her pregnancy and receives ongoing nurse visits that continue through her child’s second birthday.

The NFP goals³ are:

- Improve pregnancy outcomes by helping women engage in good preventive health practices, including thorough prenatal care from their healthcare providers, improving their diets, and reducing their use of cigarettes, alcohol and illegal substances;
- Improve childhood health and development by helping parents provide responsible and competent care; and
- Improve the economic self-sufficiency of the family by helping parents develop a vision for their own future, plan future pregnancies, and continue their education and find work.

The NFP began serving its first Florida clients in Palm Beach County in 2008 and in Pinellas County in 2011.⁴ NFP also serves clients in Broward, Collier, Duval, Gadsden, Hendry, Hillsborough, Lee, Miami-Dade, and Orange counties.⁵

Department of Health

The Department of Health (DOH) was created in 1996,⁶ and its purpose is to protect and promote the health of all residents and visitors in the state through organized state and community efforts, including cooperative agreements with counties.⁷ One of the DOH’s duties is to provide or ensure the provision of quality health care and related services to identified populations in the state.⁸

¹ See <http://www.payforsuccess.org/learn/basics/> (last visited on March 19, 2017).

² See https://www.nursefamilypartnership.org/assets/PDF/Communities/State-profiles/FL_State_Profile.aspx (last visited on March 17, 2017).

³ *Id.*

⁴ See <http://www.nursefamilypartnership.org/locations/Florida> (last visited on March 17, 2017).

⁵ See <http://www.nursefamilypartnership.org/locations/Florida/find-a-local-agency> (last visited on March 17, 2017).

⁶ Section 20.43, F.S.

⁷ Section 20.43(1), F.S.

⁸ Section 20.43(1)(e), F.S.

In response to appropriation 467 of the 2016-2017 General Appropriations Act,⁹ a total of \$681,250 in non-recurring funds was provided to the DOH to integrate the NFP home visiting model in designated Healthy Start Coalitions and federally qualified health centers to provide intensive nurse visitation services for women and their infants. The DOH contracted with the Florida Association of Healthy Start Coalitions to implement the NFP model at 5 additional clinic sites located in Brevard, Hillsborough, Miami-Dade (two sites), and Orange counties through sub-contracts (Contract period of September 1, 2016 – June 30, 2017).¹⁰

This appropriation also authorized \$10,000 for the DOH to contract with the Nurse-Family Partnership National Service Office for process and outcome data identification, management, analysis, training, and programmatic support (Contract period of September 16, 2016 – June 30, 2017).¹¹

Chapter 287, Florida Statutes

Chapter 287, F.S., regulates state agency¹² procurement of personal property and services.¹³ Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- "Invitations to bid," which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- "Requests for proposals," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "Invitations to negotiate," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.¹⁴

⁹ Ch. 2016-66, s. 3, Laws of Fla.

¹⁰ E-mail from Bryan P. Wendel, Government Analyst II, Office of Legislative Planning, Department of Health, dated March 17, 2017 (Copy on file with the Governmental Oversight and Accountability Committee).

¹¹ *Id.*

¹² As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

¹³ Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

¹⁴ See ss. 287.012(6) and 287.057, F.S.

Contracts for commodities or contractual services in excess of \$35,000 must be procured using a competitive solicitation process.¹⁵ However, some specified contractual services and commodities are not subject to competitive-solicitation requirements.¹⁶

The Department of Management Services (DMS) assists state agencies and eligible users by providing uniform commodity and contractual service procurement policies, rules, procedures, and forms.¹⁷

III. Effect of Proposed Changes:

Section 1 provides numerous definitions necessary to implement the pay-for-success contracts.

The term “pay-for-success contract” or “contract” is defined as a contract between a state agency and a private entity to fund a program, as specified in the General Appropriations Act, to address a critical public problem with historically poor outcomes.

The term “private entity” is defined as a private, not-for-profit organization, or a subsidiary or an affiliate thereof, exempt from federal income taxation pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, which enters into a pay-for-success contract with a state agency and subcontracts with one or more entities to provide the actual services.

The term “success payment” is defined as the amount paid to a private entity when performance outcome measures established in the pay-for-success contract are met, or as otherwise set forth in the pay-for-success contract.

Under the pay-for-success concept, the private entity must secure initial funding for the services provided under the contract from private-sector investors and enter into separate subcontracts with entities providing the services for the identified program.

Contingent upon authorization in the General Appropriations Act, a state agency may negotiate and enter into a pay-for-success contract with a private entity. This contract may be initiated in one fiscal year, may continue into subsequent fiscal years, and may be paid from appropriations authorized in any of those fiscal years.

The state agency is required to:

- Determine performance outcome measures to be included in the contract in consultation with the private entity and provider.
- Determine the data to be included in an annual report filed by a private entity.
- Select an independent, nationally recognized evaluator through competitive solicitation procedures to evaluate the performance outcome measures specified in the contract.

¹⁵ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., “competitive solicitation” means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

¹⁶ See s. 287.057(3)(e), F.S.

¹⁷ Section 287.032(2), F.S.

- Ensure that subcontractors share participant data and sign an acknowledgment that the data may be shared with an independent evaluator for research and evaluation purposes, and maintain documentation of the required acknowledgements.

A pay-for-success contract must meet all of the following requirements:

- Be limited to programs specified in the General Appropriations Act.
- Require the private entity to underwrite or secure upfront capital from private funders, such as foundations, banks, businesses, or individuals to fund the services provided under the subcontracts.
- Require an independent evaluator to determine whether the specified performance outcomes have been achieved.
- Require a success payment, consistent with the General Appropriations Act, if the specified performance outcome measures are achieved.
- Prohibit the private entity from receiving or viewing any personally identifiable participant information.

The bill requires a private entity to annually report to the state agency for the duration of the contract period. In addition, the bill specifies that funding for a program under this bill is not considered a procurement item under s. 287.057, F.S.

The bill also requires the DMS to prescribe the procedures to be used by state agencies in connection with pay-for-success contracts by December 1, 2017.

Section 2 provides that, contingent upon authorization in the General Appropriations Act, the Department of Health is authorized to implement the Nurse-Family Partnership pay-for-success contract as an evidence-based practice model or provider. All subsequent models or providers funded under this program are subject to the same requirements provided under s. 287.05715, F.S., as created by this bill.

Section 3 appropriates the nonrecurring sum of \$850,000 from the General Revenue Fund for the 2017-2018 fiscal year, to the Department of Health to support existing infrastructure and implementation of the Nurse-Family Partnership model in designated healthy start coalitions and federally qualified health centers as provided in Specific Appropriation 467 of the 2016-2017 General Appropriations Act in preparation for participation in the pay-for-success contract program established under s. 287.05715, F.S., as created by this bill.

Section 4 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate. Investors who fund the private providers of services could potentially lose their investments if the service provider did not meet the outcome measures whereby the state would not be required to make payment for the services provided.

C. Government Sector Impact:

Funding for pay-for-success contracts is contingent upon authorization in the General Appropriations Act, and initially limited to the DOH's implementation of the NFP pay-for-success contract. In addition, the bill requires the DMS to prescribe procedures to be used by state agencies in connection with these contracts. Administrative and technical support for the newly created task are to be provided by the DMS. As of publication of the analysis, the DMS has not provided an estimate of the impact.

VI. Technical Deficiencies:

Lines 100-101 of the bill provide, "Funding obtained for a program under this section is not a procurement item under s. 287.057, F.S." It is unclear whether this provision is intended to deem the private entity's efforts to obtain private investment not to be subject to the competitive procurement process. If this is the intent, the provision is most likely unnecessary.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 287.05715 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.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
