

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 242

INTRODUCER: Senator Garcia

SUBJECT: Fiscal Accountability

DATE: March 6, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Limones-Borja</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 242 requires any nonprofit organization that receives state funds through a contract with the State, on or after July 1, 2023, to provide documents that indicate the amount of state funds it used for the remuneration of its board of directors or officers to the state entity's contract manager.

The bill requires state entities that execute, amend, or extend a contract with a nonprofit organization on or after July 1, 2023, to include in the contract a requirement that the contractor nonprofit provide documentation indicating its use of state funds for remuneration on a per-contract and per-allocation basis. The required documentation must specify the amounts and recipients of the remuneration. The bill also requires a state entity to post this documentation to the Florida Accountability Contract Tracking System, and the nonprofit organizations to post this documentation to its website, if it maintains one.

The impact on state government expenditures is indeterminate, but most likely insignificant. The Department of Financial Services will likely incur costs modifying the contract management system to include the information required by the bill.

The bill takes effect July 1, 2023.

II. Present Situation:

Transparency Florida Act

Section 215.985, F.S., is referred to as the Transparency Florida 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; and
- 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 Florida citizens to view state budgets, payments, and contracts in order to hold state government accountable. The website provides links to:

- Florida Accountability Contract Tracking System (FACTS);
- Local Government Financial Reporting;
- State Payments;
- State Financial Reports;
- State Employee Data;
- State Contract Audits;
- State Economic Incentives Program; and
- State Financial Reports.

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.² 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; and
- Electronic copies of the contract and procurement documents that have been redacted to exclude confidential information or exempt information.³

¹ Department of Financial Services, *Transparency Florida*, available at <https://www.myfloridacfo.com/Transparency/> (last visited Feb. 24, 2023).

² Section 215.985(14), F.S.

³ Section 215.985(14)(a), F.S.

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

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.⁴ 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.⁵

Contract Terms

Each public agency contract for services entered into or amended on or after July 1, 2020, must authorize the public agency to inspect the:

- Financial records, papers, and documents of the contractor that are directly related to the performance of the contract or the expenditure of state funds.
- Programmatic records, papers, and documents of the contractor that the public agency determines are necessary to monitor the performance of the contract or to ensure that the terms of the contract are being met.⁶

The contract must require the contractor to provide the records, papers, and documents requested by the public agency within 10 business days after the request is made.⁷

III. Effect of Proposed Changes:

Section 1 amends s. 215.985, F.S., to require state entities to post to the Florida Accountability Contract Tracking System (FACT system) any documentation it receives pursuant to s. 216.1366, F.S., which evinces a contractor nonprofit organization's use of state funds for remuneration of its board of directors or officers. This requirement applies only to contracts with nonprofit organizations that are executed, amended, or extended on or after July 1, 2023, and pursuant to which the state entity makes a payment of state funds.

Section 2 amends s. 216.1366, F.S., to require any contract for services executed, amended, or extended on or after July 1, 2023 with a nonprofit organization, to include the amount of state funds:

- Allocated to be used during the full term of the contract for remuneration to any member of the board of directors or an officer of the contractor.
- Allocated under each payment by the public agency to be used for remuneration of any member of the board of directors or an officer of the contractor.

⁴ Section 215.985(14)(d), F.S.

⁵ Section 215.985(14)(f), F.S.

⁶ Section 216.1366(1), F.S.

⁷ Section 216.1366(2), F.S.

The documentation must indicate the amounts and recipients of the remuneration.

Section 2 requires that such information be included in the FACT system maintained pursuant to s. 215.985, F.S., and be posted on the nonprofit's website, if it maintains one.

Section 2 defines the following terms:

- “Officer” means a chief executive officer, chief financial officer, chief operating officer, or any other position performing an equivalent function.
- “Remuneration” means all compensation earned by or awarded to personnel, whether paid or accrued, regardless of contingency, including bonuses, accrued paid time off, severance payments, incentive payments, contributions to a retirement plan, or in-kind payments, reimbursements, or allowances for moving expenses, vehicles and other transportation, telephone services, medical services, housing, and meals.
- “State funds” means 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. The term does not include funds used for the state Medicaid program.

Section 3 provides the bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. 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.

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:

To implement section 2 of the bill, a nonprofit organization may incur costs associated with making changes necessary to post the required information on its website.

C. Government Sector Impact:

To implement section 2 of the bill, DFS may incur costs in modifying its website to include the information required by the act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the sections 215.985 and 216.1366 of the Florida Statutes.

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.