

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/HB 955 Fiscal Accountability

**SPONSOR(S):** Constitutional Rights, Rule of Law & Government Operations Subcommittee, Persons-Mulicka and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 242

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**FINAL HOUSE FLOOR ACTION:** 113 Y's

0 N's

**GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/HB 955 passed the House on May 3, 2023, as CS/SB 242.

The Transparency Florida Act requires the Chief Financial Officer to establish and maintain a contract tracking system available for public viewing on a secure website. Pursuant to this obligation, the Department of Financial Services maintains the Florida Accountability Contract Tracking System (FACTS). FACTS is designed to increase transparency and accountability in the procurement process and to ensure that state entities are complying with applicable laws and regulations. State entities must post certain information about executed contracts on FACTS, such as the names of the contracting entities, contract price, performance measurements, and other terms and conditions. Current law requires each public agency contract for services to authorize the public agency to inspect certain financial and programmatic records of the contractor within 10 business days of request.

The bill requires any contract for services with a nonprofit organization to require the contractor to provide documentation showing 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; and
- 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. The documentation must indicate the amounts and recipients of the remuneration.

The bill requires the remuneration information to be included in FACTS. The bill also requires the information to be posted on the contractor's website, if the contractor maintains a website.

For each contract for which a state entity makes a payment, the state entity must post onto FACTS any documents submitted pursuant to the required contract terms which indicate the use of state funds as remuneration under the contract or a specified payment associated with the contract.

The bill specifies that its provisions only apply to contracts executed, amended, or extended on or after July 1, 2023.

The bill may have a minimal, negative fiscal impact on state government expenditures and the private sector.

The bill was approved by the Governor on June 12, 2023, ch. 2023-214, L.O.F., and will become effective on July 1, 2023.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Present Situation

##### Transparency Florida Act

The Transparency Florida Act (Act)<sup>1</sup> requires the Governor, in consultation with the appropriations committees of the Senate and House of Representatives, to maintain a central website providing access to all other websites required to be linked under the Act.<sup>2</sup> This requirement was met by creating the webpage known as “Transparency Florida,” an initiative to ensure accountability in how the state spends its money.<sup>3</sup> The Transparency Florida website contains a variety of data sets, reports, and tools that allow the public to explore state government expenditures, contracts, salaries, and other financial information. Some of the information that can be found on the Transparency Florida website includes:

- Expenditure data: The website provides detailed information on state government spending, including vendor payments and budget allocations.
- Contract data: The website contains information on contracts awarded by state agencies, including the contract amount, vendor name, and the date the contract was awarded.
- Salary data: The website provides information on state employee salaries, including the name, position, and salary of each employee.
- Financial reports: The website provides access to financial reports and audits related to state government operations.
- Federal grant expenditures: The website contains information on federal funding received by the state of Florida, including how the funds are being used.

##### *Florida Accountability Contract Tracking System*

The Act requires the Chief Financial Officer (CFO) to establish and maintain a secure contract tracking system available for viewing and downloading by the public through a secure website.<sup>4</sup> Pursuant to this obligation, the Department of Financial Services (DFS) maintains the Florida Accountability Contract Tracking System (FACTS).<sup>5</sup> FACTS is designed to increase transparency and accountability in the procurement process and to ensure that state entities<sup>6</sup> are complying with applicable laws and regulations. The Act requires state entities to post the following information on FACTS within 30 calendar days of executing a contract:

- The names of the contracting parties;
- The procurement method;
- The contract beginning and ending dates;
- The nature or type of the 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 or services, the justification for such action, including a reference to the applicable statutory exemption, if any; and

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<sup>1</sup> S. 215.985, F.S.

<sup>2</sup> S. 215.985(4), F.S.

<sup>3</sup> Executive Office of the Governor, *Transparency Florida*, <http://www.transparencyflorida.gov/> (last visited March 2, 2023).

<sup>4</sup> S. 215.985(14), F.S.

<sup>5</sup> Florida DFS, *Florida Accountability Contract Tracking System*, <https://facts.fldfs.com/Search/ContractSearch.aspx> (last visited March 2, 2023).

<sup>6</sup> “State entity” means an official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; a state attorney, public defender, criminal conflict and civil regional counsel, capital collateral regional counsel, and the Justice Administrative Commission; the Public Service Commission; and any part of the judicial branch of state government. S. 215.985(14)(h)2., F.S.

- Copies of the contracts and procurement documents that have been redacted to exclude any confidential or exempt<sup>7</sup> information.<sup>8</sup>

Within 30 calendar days after amending an existing contract, the state entity that is a party to the contract must update the information in FACTS.<sup>9</sup>

Records made available on FACTS may not reveal information made confidential or exempt by law. Each state entity that is a party to a contract must redact confidential or exempt information from the contract and procurement documents before posting an electronic copy on FACTS.<sup>10</sup> A request to redact confidential or exempt information must be made in writing and delivered by mail, facsimile, electronic transmission, or in person to the state entity. The CFO and DFS, or their respective employees, are not responsible for redacting confidential or exempt information contained on FACTS or for the failure of a state entity to redact such information. The CFO may regulate and prohibit the posting of records that could facilitate identity theft or fraud.<sup>11</sup> Such action by the CFO, however, does not supersede the duty of a public entity to provide a copy of a public record upon request.

### Contract Terms

In order to preserve the interest of the state in the prudent expenditure of state funds, each public agency contract for services must authorize the public agency to inspect the following information of the contractor:

- Financial records, papers, and documents that are directly related to the performance of the contract or the expenditure of state funds; and
- Programmatic records, papers, and documents which 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.<sup>12</sup>

In addition, the contract must require the contractor to provide such records, papers, and documents requested by the public agency within 10 business days after the request is made.<sup>13</sup>

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<sup>7</sup> There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att'y Gen. Fla. 04-09 (2004).

<sup>8</sup> S. 215.985(14)(a), F.S.

<sup>9</sup> S. 215.985(14)(b), F.S.

<sup>10</sup> S. 215.985(14)(d), F.S.

<sup>11</sup> S. 215.985(14)(f), F.S.

<sup>12</sup> S. 216.1366(1), F.S.

<sup>13</sup> S. 216.1366(2), F.S.

## Effect of the Bill

The bill requires any contract for services executed, amended, or extended on or after July 1, 2023, with a nonprofit organization<sup>14</sup> to require the contractor to provide documentation that indicates the amount of state funds:<sup>15</sup>

- Allocated to be used during the full term of the contract for remuneration<sup>16</sup> to any member of the board of directors or an officer<sup>17</sup> 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. The documentation must indicate the amounts and recipients of the remuneration.

The bill requires the remuneration information to be included in FACTS. The bill also requires the information to be posted on the contractor's website, if the contractor maintains a website.

For each contract for which a state entity makes a payment pursuant to a contract executed, amended, or extended on or after July 1, 2023, the state entity must post onto FACTS any documents submitted pursuant to the required contract terms which indicate the use of state funds as remuneration under the contract or a specified payment associated with the contract.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill could have a minimal, negative fiscal impact on the state because state entity staff responsible for posting information on FACTS may require training related to the posting of information required by the bill. In addition, state entities could incur costs associated with redacting confidential and exempt information prior to posting documents on FACTS. The costs, however, would be absorbed as they are part of the day-to-day responsibilities of state entities.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

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<sup>14</sup> "Nonprofit organization" is defined under s. 215.97(2)(m), F.S., incorporated into the bill, to mean any corporation, trust, association, cooperative, or other organization that:

- Is operated primarily for scientific, educational service, charitable, or similar purpose in the public interest.
- Is not organized primarily for profit.
- Uses net proceeds to maintain, improve, or expand the operations of the organization.
- Has no part of its income or profit distributable to its members, directors, or officers.

<sup>15</sup> The bill defines "state funds" 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. The term does not include funds used for the state Medicaid program.

<sup>16</sup> The bill defines "remuneration" to mean 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.

<sup>17</sup> The bill defines "officer" to mean a chief executive officer, chief financial officer, chief operating officer, or any other position performing an equivalent function.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could have a minimal, negative fiscal impact on nonprofit organizations that contract with the state due to the bill's increased reporting requirements. Any such cost, however, would be de minimis.

D. FISCAL COMMENTS:

None.