



Legislative Fiscal Bureau

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February 8, 2018

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Special Session Assembly Bill 7 and Senate Bill 7: Pay for Success Contracting

On January 26, 2018, Special Session Assembly Bill 7 and Senate Bill 7 ("the bill"), relating to contracts with private service providers for payments to provide social, employment, or correctional services to individuals, were introduced and referred to the Assembly Committee on Public Benefit Reform and the Senate Committee on Public Benefits, licensing, and State-Federal Relations. Executive action on both bills is scheduled by the respective committees for Tuesday, February 6, 2018.

SUMMARY OF BILL

The bill creates a segregated fund named the pay for success fund consisting of transfers from the general fund made by the Secretary of the Department of Administration (DOA) for pay for success contracts. The bill also creates a continuing SEG appropriation under DOA for the purpose of administering and making payments for pay for success contracts under the criteria established by the bill. Expenditures from the appropriation would only be limited to the amount of revenue transferred by the Secretary of DOA from the general fund to the pay for success fund. The balance of the pay for success fund would be limited to \$20 million at any given point in time.

The Department would be authorized to contract with a private service provider (operated for profit or not for profit) for the provision of social, employment, or correctional services, as determined by DOA. Such contracts could be entered into jointly with another state agency or a local governmental unit. The bill does not define state agency or local governmental unit.

Each contract would be required to specify: (a) that a majority of the total contract payment is conditioned on the service provider achieving performance measures, as specified in the contract, toward the outcome of the contract objectives; (b) a defined objective procedure by which an independent evaluator is required to determine whether the performance measures specified in

the contract have been achieved; and (c) a schedule of the amounts and timing of payments to be earned by the service provider during each year or other specified period of the contract.

The Department could not execute a contract under the bill unless: (a) DOA determines that the contract is expected to result in significant performance improvements or significant budget savings for the state or a local governmental unit if the contract objectives are achieved; (b) a detailed description of the proposal for the contract is approved by the Joint Committee on Finance; and (c) a transfer is made by the Secretary of DOA from the general fund to the pay for success fund in an amount sufficient to administer the contract and make all payments that may become due over the effective period of the contract.

Under the approval process specified by the bill, DOA would be required to notify the Committee in writing of the proposed contract. The notification would be required to describe in detail DOA's proposal for the contract. Under the bill, the Committee is provided 14 working days to review the proposal. If the Co-chairs of the Committee notify DOA within the period of review that the Committee has scheduled a meeting for the purpose of reviewing the proposed contract, DOA may not execute the contract without the approval of the Committee.

The bill would exempt pay for success contracts from most statutory procurement requirements, with the following exceptions: (a) DOA would be required to report to the Ethics Commission a list identifying each solicitation for bids or competitive sealed proposals and each proposed order or contract for which bids or competitive sealed proposals will not be solicited, if the expenditure would be \$10,000 or more; and (b) contracts would be subject to non-discrimination requirements. Statutory provisions that would not apply to pay for success contracts include but are not limited to: a requirement to award contracts to the lowest responsible bidder (taking into account certain considerations); mandatory competitive bidding or proposals when the estimated cost exceeds \$50,000; a requirement to conduct a cost-benefit analysis of each proposed contractual service procurement over \$50,000; continued appropriateness reviews; providing written justification of the need for contracting for services; promulgation of rules to assure that the process used for selection includes a review of the independence and relationship of the contractor to employees of the agency; preparation of standard specifications for purchases; authority and exemptions specific to the University of Wisconsin System; legislative and judicial branch purchasing authority and requirements; and preferences for disabled veteran-owned businesses and minority businesses.

Under the bill, DOA would be required to make payments to service providers from the pay for success fund according to the contract terms. If an executed contract were to be terminated or otherwise expire, the bill requires that the unexpended remainder of the amount transferred to the pay for success fund for the contract be transferred to the general fund. In addition, any amounts DOA may recover from a service provider for overpayment or for another amount recovered under the terms of a contract would be required to be transferred to the general fund.

The bill requires DOA to submit a report upon completion of each contract to the appropriate standing committees of the Legislature that describes in detail the performance measures specified for the contract and the extent to which those performance measures were

achieved. If the contract is jointly executed with another state agency, the other state agency would be required to submit a report upon completion of each contract to the appropriate standing committees of the Legislature that describes in detail the outcomes of the contract.

Finally, the bill requires the Departments of Health Services, Corrections, Children and Families, and Workforce Development to each conduct a study of the programs they administer to determine whether and how pay for success contracting could be utilized as an alternative to current funding models for the provision of services under those programs. Each agency would be required to submit a report detailing the findings of the study to the Committee and the appropriate standing committees of the Legislature.

FISCAL EFFECT

The potential fiscal effect of the bill is unknown at this time. However, DOA anticipates funding would not be transferred in 2017-18. While the balance of the pay for success fund would be limited to \$20 million at a given point in time, transfers from the general fund and expenditures from the pay for success fund in a given fiscal year could be greater than \$20 million. All transfers to the pay for success fund would cause a corresponding decrease in the balance of the general fund.

Fiscal estimates for the bill have been received from the following agencies: DOA; Health Services (DHS); Corrections; Children and Families (DCF); and Workforce Development (DWD). Corrections indicates that the bill has no state fiscal effect. Estimates submitted by the remaining agencies indicate that the state fiscal effect of the bill is indeterminate. Additionally, DHS anticipates that it would likely contract with a third-party vendor to perform the study of programs required under the bill, which it estimates would cost \$500,000 on a one-time basis (\$250,000 GPR and \$250,000 FED). Fiscal estimates of DCF and DWD indicate that the study and report would be prepared by the agency and that the time and cost to conduct the study is unknown at this time. The estimate submitted by DOA states that the agency would incur costs in an unknown amount associated with the administration of pay for success contracts, including: the solicitation and review of proposals, contract negotiation, processing payment of amounts due, and development of the final report for each contract. Further, DOA would jointly monitor contract performance with other participating state agencies. The bill does not appropriate funds to study and compile a report regarding programs currently being administered. Agencies have not indicated additional funds would be needed for this purpose.

Under the bill, pay for success contracts could be used to fund existing programs for which funding has already been appropriated, as well as new state-funded programs and services for state agencies and local governments. The bill does not specify any means by which other state agency appropriations may be reduced in association with services for which funding was already provided. The bill also does not specify a means by which payment for services may be reimbursed by a local government. The administration indicates that a joint contract with a local government could specify terms of reimbursement for services provided.

While the bill does not specify that the total amount to be transferred would be included in the notification under the approval process, the administration indicates the intent of the proposal is that the Committee would be informed of the total amount that would be transferred before it approves the contract. Further, although the cost to administer the contract and the cost to compensate an independent evaluator to determine whether performance measures were met would also be paid from the pay for success fund, the bill does not require that the cost to administer the contract or to compensate the evaluator be specified in the contract, nor does it specify that a separate contract for a performance evaluator would require Committee approval.

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