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133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. D. Manning

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SUMMARY

- Expands the current Pay for Success Contracting Program and requires the Treasurer of State to administer it.
- Allows the Treasurer to enter into pay for success contracts with service intermediaries for the delivery of specified services that benefit the state, a political subdivision, or a group of political subdivisions, such as programs addressing education, public health, criminal justice, or natural resource management.
- Permits the Treasurer to enter into a pay for success contract upon receiving an appropriation for that purpose, upon receiving a federal grant for that purpose, or upon the request of another state agency, political subdivision, or group of state agencies or political subdivisions.
- Allows any person or entity to act as a service intermediary.
- Specifies required terms for a pay for success contract, including a requirement that the service intermediary be paid only if the performance targets are met.
- Requires the Treasurer to adopt certain administrative rules to administer the Program.
- Establishes funds in the state treasury to hold the moneys the Treasurer will use to make payments to service intermediaries under pay for success contracts.
- Continues the current Pay for Success Contracting Program administered by the Director of Administrative Services in order to allow the Director and the Department of Health to continue to administer certain pilot projects intended to reduce infant mortality.

DETAILED ANALYSIS

Pay for Success Contracting Program

Generally

The bill expands the current Pay for Success Contracting Program, described below under "**Continuation of current program**," and requires the Treasurer of State to administer it. Under the bill, the Treasurer may enter into pay for success contracts with service intermediaries for the delivery of specified services that benefit the state, a political subdivision, or a group of political subdivisions, such as programs addressing education, public health, criminal justice, or natural resource management. The service intermediary receives payment for providing those services only if the service intermediary meets certain performance targets specified in the contract. If the program operated by the service intermediary is unsuccessful, the government is not required to pay the service intermediary.

Under the bill, the Treasurer may enter into a pay for success contract upon receiving an appropriation from the General Assembly for that purpose or upon receiving federal grant moneys for that purpose. Additionally, the bill allows the Treasurer to enter into a pay for success contract on behalf of another state agency, a political subdivision, or a group of state agencies or political subdivisions at the request of the agency, subdivision, or group. In that case, the requesting entity must deposit the cost of the contract with the Treasurer, and the Treasurer is responsible for making payments to the service intermediary.[1]

Service intermediaries and service providers

Any person or entity may be a service intermediary. The service intermediary may act as the service provider that delivers services under the contract or may contract with a separate service provider for that purpose. Under the current program, only a nonprofit organization or a wholly owned subsidiary of a nonprofit organization may enter into a pay for success contract.[2]

Contract terms

The bill requires a pay for success contract to include provisions that do all of the following:

- Require the Treasurer, in consultation with the requesting state agency, political subdivision, or group of state agencies or political subdivisions, to specify performance targets to be met by the service provider;
- Appoint an independent evaluator, who must be a person or government entity, other than an agency, subdivision, or group that requested the Treasurer to enter into the contract, that evaluates the service provider's progress toward meeting each performance target. The evaluator must be independent from the service intermediary and the service provider and must not have common owners or administrators, managers, or employees with the service intermediary or service provider.

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[1] R.C. 113.60(B) and 113.61.

[2] R.C. 113.60(A)(1).

- Specify the process or methodology that the independent evaluator must use to evaluate the service provider's progress toward meeting each performance target;
- Require the Treasurer to pay the service intermediary in installments at times determined by the Treasurer that are specified in the contract and are consistent with applicable state law;
- Require the installment payments to the service intermediary to be based on the service provider's progress toward achieving each performance target, as determined by the independent evaluator;
- Specify the maximum amount a service intermediary may earn for the service provider's progress toward achieving the performance targets;
- Require a state agency, political subdivision, or group that requested the Treasurer to enter into the contract to ensure, in accordance with applicable laws, that the service intermediary has access to any data in the possession of the state agency, political subdivision, or group, including historical data, that the service intermediary requests for the purpose of fulfilling the contract.

These contract requirements are substantially the same as under current law, except that the bill requires the state agency, political subdivision, or group that requested the Treasurer to enter into the contract to ensure the service intermediary's access to relevant data, instead of requiring the Treasurer to ensure that access. And, the bill clarifies that a state agency, political subdivision, or group that requested the Treasurer to enter into the contract may not serve as the independent evaluator.[3]

Administrative rules

Under the bill, the Treasurer must adopt rules in accordance with the Administrative Procedure Act to administer the Pay for Success Contracting Program. The rules must include the procedure for a state agency, political subdivision, or group of state agencies or political subdivisions to request the Treasurer to enter into a contract and to deposit the cost of the contract with the Treasurer. The Treasurer's rules also must address the types of services that are appropriate for a service provider to provide under a pay for success contract and the process by which the Treasurer may award and administer a pay for success contract.[4]

Funds

The bill establishes three separate funds in the state treasury to hold the moneys the Treasurer will use to make payments to service intermediaries under pay for success contracts: the State Pay for Success Contract Fund, the Federal Pay for Success Contract Fund, and the Local Government Pay for Success Contract Fund.

The state fund consists of any moneys transferred to the Treasurer by state agencies for the purpose of entering into pay for success contracts and any moneys appropriated to the fund by the General Assembly. The federal fund consists of any moneys the Treasurer receives

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[3] R.C. 113.60(C) and 113.61.

[4] R.C. 113.60(C).

from federal agencies pursuant to grant agreements that require the Treasurer to enter into pay for success contracts. And, the local government fund consists of any moneys paid to the Treasurer by political subdivisions for the purpose of entering into pay for success contracts.

The Treasurer must use the moneys in the appropriate fund for the purpose of making payments to service intermediaries under a pay for success contract, provided that any investment earnings on the funds are credited to them, and the Treasurer may use those investment earnings to pay the costs of administering the Pay for Success Contracting Program.

When the term of a pay for success contract expires, the Treasurer must transfer any remaining unencumbered funds received from a state agency, political subdivision, or group of state agencies or political subdivisions to the appropriate agency, political subdivision, or group. The Treasurer must dispose of any excess federal grant funds in accordance with the grant agreement.[5]

Continuation of current program

The bill also continues the current Pay for Success Contracting Program administered by the Director of Administrative Services for a limited purpose. Currently, the Director administers a narrower version of the Program, under which the Director may enter into contracts with social service intermediaries to achieve certain social goals. A social service intermediary must be either a nonprofit organization that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, or a wholly owned subsidiary of a nonprofit organization, that delivers or contracts for the delivery of social services, raises capital to finance the delivery of social services, and provides ongoing project management and investor relations for those activities.

The required terms of a pay for success contract with the Director of Administrative Services are largely the same as under the bill, as discussed above under "**Contract terms**." However, current law does not establish particular funds from which the Director must make contract payments and does not require the Director to adopt administrative rules concerning the program.

The bill transfers general authority to administer the Pay for Success Contracting Program from the Director of Administrative Services to the Treasurer of State, but allows the Director to continue to contract with social service intermediaries, in consultation with the Department of Health, to administer one or two pilot projects established in H.B. 49 of the 132nd General Assembly (the main operating budget bill). The pilot projects are intended to reduce the incidence of infant mortality, low-birthweight births, premature births, and stillbirths in the communities identified as having the highest infant mortality rates and to promote equity in birth outcomes among infants of different races. Under the bill, the current version of the law governing the Pay for Success Contracting Program continues to apply to those pilot project contracts, instead of the new version of the law established by the bill.[6]

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[5] R.C. 113.62.

[6] Current R.C. 125.66 and 125.661 and Section 207.71 of H.B. 49 of the 132nd General Assembly. See also R.C. 3701.142, not in the bill.

Background on social impact bonds

Pay for success contracts allow the state to use a financing model known as social impact bonds to fund government programs. Under this model, a private entity contracts to operate a program on behalf of the government, and the government pays the private entity only if the program achieves the desired results. In order to obtain up-front funding to operate the program, the private entity may seek investors, who provide that funding in exchange for the right to a share of the money the private entity will receive from the government if the program is successful. As a result, under this model, the private entity or its investors, instead of the government, bear the financial risk that a program will be unsuccessful.[7]

HISTORY

Action	Date
Introduced	03-27-19

H0170-I-133/ks

[7] National Conference of State Legislatures, *Social Impact Bonds,* available at ncsl.org/research/labor-and-employment/social-impact-bonds.aspx.