

REPORT OF THE GENERAL GOVERNMENT SUBCOMMITTEE

(Cobb-Hunter, Hayes, Bannister, Willis, & Moss - Staff Contact: Sarah Hearn)

SENATE BILL 461

S. 461 -- Senators Alexander, Setzler and Cromer: A BILL TO ENACT THE "SOUTH CAROLINA PAY FOR SUCCESS PERFORMANCE ACCOUNTABILITY ACT"; TO AMEND TITLE 11 OF THE 1976 CODE, RELATING TO PUBLIC FINANCE, BY ADDING CHAPTER 60, TO ESTABLISH THE TRUST FUND FOR PERFORMANCE ACCOUNTABILITY TO FUND PAY-FOR-SUCCESS CONTRACTS, WHEREBY THE STATE CONTRACTS WITH A PRIVATE-SECTOR ORGANIZATION TO ACHIEVE SPECIFICALLY DEFINED MEASUREABLE OUTCOMES IN WHICH THE STATE PAYS ONLY TO THE EXTENT THAT THE DESIRED OUTCOMES ARE ACHIEVED.

Received by Ways and Means: April 6, 2021

Summary of Bill:

This bill establishes requirements for state agencies that enter into pay-for-success contracts with a private organization. Among other requirements, each pay-for-success contract must receive approval from SFAA unless the Authority exempts a state agency from this requirement.

Additionally, this bill establishes a trust fund in the State Treasury for the purposes of funding pay-for-success contracts. The State Treasurer is designated as the trustee and administrator of the trust fund, which must be maintained separately from the general fund and all other funds of the state. The Board of Economic Advisors will account for the trust fund separately from the general fund.

Estimated Revenue Impact:

None. Both SFAA and the State Treasurer's Office anticipate being able to manage the responsibilities established in this bill within existing personnel and appropriations.

Other Notes/Comments:

Received a vote of 38-1 on Second Reading in the Senate. Received Favorable Report unanimously in subcommittee on 4/27/2021.



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.

Bill Number: S. 0658 Introduced on March 11, 2021
Author: Bennett
Subject: State Retiree's Contingent Beneficiary
Requestor: Senate Finance
RFA Analyst(s): Miller
Impact Date: March 16, 2021

Fiscal Impact Summary

This bill will have no expenditure impact as it does not fiscally or materially alter the responsibilities of PEBA.

Explanation of Fiscal Impact

Introduced on March 11, 2021

State Expenditure

This bill specifies a member who is not retired may nominate a contingent beneficiary for receipt of payment on death of the member within all state retirement systems. Currently, only active contributing members may nominate a contingent beneficiary. This bill allows those members who are not an active contributing member, but are not yet retired, to make this nomination. This bill serves as a technical clean-up and provides conforming language for the Public

Employee Benefits Authority (PEBA) and the retirement and insurance programs. PEBA anticipates this bill will have no expenditure impact as it does not fiscally or materially alter the responsibilities of PEBA.

State Revenue

N/A

Local Expenditure

N/A

Local Revenue

N/A

A handwritten signature in blue ink that reads "Frank A. Rainwater".

Frank A. Rainwater, Executive Director

South Carolina General Assembly
124th Session, 2021-2022

S. 461

STATUS INFORMATION

General Bill

Sponsors: Senators Alexander, Setzler and Cromer

Document Path: I:\s-res\tca\022pay .kmm.tca.docx

Introduced in the Senate on January 13, 2021

Introduced in the House on April 6, 2021

Currently residing in the House Committee on **Ways and Means**

Summary: SC Pay for Success Performance Accountability

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
1/13/2021	Senate	Introduced and read first time (Senate Journal-page 5)
1/13/2021	Senate	Referred to Committee on Finance (Senate Journal-page 5)
3/17/2021	Senate	Committee report: Favorable Finance (Senate Journal-page 10)
3/18/2021	Senate	Read second time (Senate Journal-page 16)
3/25/2021	Senate	Roll call Ayes-38 Nays-1 (Senate Journal-page 16)
3/30/2021	Senate	Read third time and sent to House (Senate Journal-page 8)
4/6/2021	House	Introduced and read first time (House Journal-page 128)
4/6/2021	House	Referred to Committee on Ways and Means (House Journal-page 128)

View the latest [legislative information](#) at the website

VERSIONS OF THIS BILL

[1/13/2021](#)

[3/17/2021](#)

[3/18/2021](#)

1 COMMITTEE REPORT

2 March 17, 2021

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S. 461

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6 Introduced by Senator Alexander

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8 S. Printed 3/17/21--S.

[SEC 3/18/21 1:01 PM]

9 Read the first time January 13, 2021.

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THE COMMITTEE ON FINANCE

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To whom was referred a Bill (S. 461) to enact the "South Carolina Pay for Success Performance Accountability Act"; to amend Title 11 of the 1976 Code, relating to public finance, by adding Chapter 60, etc., respectfully

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REPORT:

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That they have duly and carefully considered the same and recommend that the same do pass:

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HUGH K. LEATHERMAN, SR. for Committee.

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STATEMENT OF ESTIMATED FISCAL IMPACT

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Explanation of Fiscal Impact

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State Expenditure

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This bill establishes the requirements for state agencies that elect to enter into pay-for-success contracts with a private-organization. Among other requirements, each pay-for-success contract must receive approval from the State Fiscal Accountability Authority (SFAA), unless SFAA exempts a state agency from this requirement.

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Additionally, this bill establishes a trust fund in the State Treasury for the purposes of funding pay-for-success contracts. The State Treasurer is the trustee and administrator of the trust fund, which must be maintained separately from the general fund and all other funds of the state. The Board of Economic Advisors will account for the trust fund separately from the general fund.

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State Fiscal Accountability Authority (SFAA). This bill adds responsibilities for SFAA to review and approve pay-for-success contracts and to receive annual reports on these contracts. SFAA anticipates it will be able to manage these responsibilities within the

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1 normal course of business and within existing appropriations.
2 Therefore, this bill will have no expenditure impact for SFAA.
3 **State Treasurer.** This bill requires the State Treasurer to set up and
4 administer a trust fund for pay-for-success contracts. The State
5 Treasurer anticipates being able to manage these additional
6 responsibilities with existing personnel and within existing
7 appropriations. Therefore, this bill will have no expenditure impact
8 for the State Treasurer.

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10 Frank A. Rainwater, Executive Director

11 Revenue and Fiscal Affairs Office

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A BILL

TO ENACT THE “SOUTH CAROLINA PAY FOR SUCCESS PERFORMANCE ACCOUNTABILITY ACT”; TO AMEND TITLE 11 OF THE 1976 CODE, RELATING TO PUBLIC FINANCE, BY ADDING CHAPTER 60, TO ESTABLISH THE TRUST FUND FOR PERFORMANCE ACCOUNTABILITY TO FUND PAY-FOR-SUCCESS CONTRACTS, WHEREBY THE STATE CONTRACTS WITH A PRIVATE-SECTOR ORGANIZATION TO ACHIEVE SPECIFICALLY DEFINED MEASUREABLE OUTCOMES IN WHICH THE STATE PAYS ONLY TO THE EXTENT THAT THE DESIRED OUTCOMES ARE ACHIEVED.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act must be known and may be cited as the “South Carolina Pay-for-Success Performance Accountability Act”.

SECTION 2. Title 11 of the 1976 Code is amended by adding:

“CHAPTER 60

Pay-for-Success Performance Accountability

Section 11-60-10. For the purposes of this chapter:

- (1) ‘Authority’ means the State Fiscal Accountability Authority.
- (2) ‘Independent evaluator’ means a qualified person or entity selected by a state agency, and with whom a state agency contracts, to provide independent evaluation services to determine if performance measures have been achieved within a stated period under a pay-for-success contract. An independent evaluator must be identified prior to submitting a pay-for-success proposal to the authority, as required by Section 11-60-30.
- (3)(a) ‘Pay-for-success contract’ means a written agreement between a state agency and a private-sector organization under which:
 - (i) the private-sector organization provides a program or service, including a related project management service;
 - (ii) the parties set forth performance measures for a given population over a certain period of time that the private-sector organization intends to achieve;
 - (iii) the parties agree to an amount that the private-sector organization earns if the performance measures are achieved within the stated time period and agree that the success payment is due to the private-sector organization only if it achieves these performance measures within the stated period; and
 - (iv) any other provisions are included as required by Section 11-60-40.
- (b) ‘Pay-for-success contract’ does not mean a guaranteed energy, water, or wastewater savings contract or a contract subject to Article 9, Title 11, Chapter 35.
- (4) ‘Performance measures’ means specific, measurable, time-based goals, the completion of which predicates payment under a pay-for-success contract.
- (5) ‘Private-sector organization’ means a firm or non-profit organization that contracts with a state agency in a pay-for-success contract.
- (6) ‘Success payment’ means the money paid when a pay-for-success contract performance measure is met.

Section 11-60-20. Subject to Section 11-60-30, a state agency may enter into a pay-for-success contract only if the state agency head explains in writing how the contract will produce a quantifiable public benefit or financial savings to the State, by achieving meaningful impact outcomes and not simply short-term unsustainable outcomes, and outlines any risks associated with the proposed project.

Section 11-60-30. All pay-for-success contracts require approval by the authority prior to competitive solicitation or contract formation, whichever is earlier. The authority may exempt a state agency from this requirement. The authority must consider, at a minimum, the availability and source of funds to make success payments, the qualifications and independence of the independent evaluator, the proposed performance measures, and the stated public benefit or financial savings to the State, including the state agency head's written explanation as required by Section 11-60-20. If the authority exempts a state agency from obtaining authority approval, then the state agency must keep the state agency head's written explanation of benefits and savings in its records. Nothing herein exempts a pay-for-success contract from Chapter 35, Title 11.

Section 11-60-40. Each pay-for-success contract must include the following:

- (1) a full and thorough description of the objectives of the pay-for-success contract; a clear description of the program, service, or project management services to be performed by the private-sector organization; a clear statement of the outcomes sought to be achieved for a certain population; the time period under which the outcomes must be achieved; a clear statement of the performance measures used to measure the outcomes; an analysis of how the defined performance measures will demonstrate progress in addressing the objectives; and how achieving the objectives should provide a significant public benefit;
- (2) a requirement that the state agency will transfer funds to fully cover the success payment under the pay-for-success contract to the trust account that is specifically established for pay-for-success contracts provided in Section 11-60-50;
- (3) a requirement that any success payment is conditioned on achieving specific outcomes based on the defined performance measures, as evaluated by an independent evaluator;
- (4) a requirement that the private-sector organization provide evidence that the private-sector organization has secured all of the necessary financing before service delivery begins;
- (5) a description of the data each state agency involved in developing the pay-for-success contract will provide to the private-sector organization. Data will be provided by the state agency only to the extent permissible by law;
- (6) the objective process that an independent evaluator, procured by the state agency, will use to monitor program progress and determine if a performance measure is achieved;
- (7) the reporting requirements the private-sector organization must provide to the state agency regarding the private-sector organization's progress in meeting the performance measures;
- (8) the method that will be used to calculate the amount and timing of success payments to the private-sector organization during the pay-for-success contract if the independent evaluator determines that the private-sector organization achieves a performance measure;
- (9) the terms under which a pay-for-success contract may be terminated.

Section 11-60-50. (A) There is established in the State Treasury a trust fund for the purpose of making success payments under pay-for-success contracts. Each agency entering into a pay-for-success contract shall provide funding into the trust to cover one hundred percent of the potential success payment upon entering into the contract. The State Treasurer is the trustee and administrator of the trust fund, which must

be maintained separately from the General Fund of the State and all other funds. Funds held in the trust are not subject to reversion to the general fund during the term of any pay-for-success contract.

(B) The State Treasurer on behalf of the trust fund established for success payment is authorized to receive funds from other governmental entities and non-profits if they are subject to a valid pay-for-success contract. Upon written authorization by the state agency head whose state agency has entered a pay-for-success contract, the State Treasurer shall make payments from the trust fund.

Section 11-60-60. (A) Annually, on or before February first, every state agency that has entered into a pay-for-success contract shall provide a written status report for any outstanding pay-for-success contracts.

(B) The status report shall include progress toward meeting objectives and outcomes; sources of private and other funding supporting the contract, to include whether any matching funds are being used; sources of funds for success payments made into the trust fund; and success payments made to date.

(C) Status reports pursuant to subsection (A) must be provided to the authority and the State Auditor, who shall maintain a central repository for these reports and for pay-for-success contracts and who shall publish such documents on its website. Any organization receiving funding pursuant to this chapter is subject to audit by the Office of the State Auditor.

(D) In status reports to the authority pursuant to subsection (A), the Board of Economic Advisors shall account for trust fund revenue separately from general fund revenues.

(E) Any private-sector organization receiving funding pursuant to this chapter is considered a 'public body' under Section 30-4-20(a) and is subject to records production requirements of the Freedom of Information Act, Section 30-4-10, et seq., with regard to any records related to a pay-for-success contract."

SECTION 3. This act takes effect upon approval by the Governor.

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