

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 14-0629.03 Jason Gelender x4330

SENATE BILL 14-185

SENATE SPONSORSHIP

Johnston and Zenzinger,

HOUSE SPONSORSHIP

Pettersen,

Senate Committees
Education

House Committees

A BILL FOR AN ACT

101 **CONCERNING PAY FOR SUCCESS CONTRACTS FOR SUCCESSFUL EARLY**
102 **CHILDHOOD EDUCATION SERVICES PROGRAMS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Pay for success contracts leverage private sector resources to implement social services programs that are likely, but not guaranteed, to generate subsequent direct or indirect reductions in government spending for other programs. Under a pay for success contract program, a government enters into a pay for success contract with a lead contractor

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
April 23, 2014

SENATE
Amended 2nd Reading
April 22, 2014

under which the lead contractor implements one or more desired programs, the government agrees to make payments to the lead contractor from resulting direct or indirect reductions in government spending, and the lead contractor uses the payments to recoup its costs incurred in implementing the program or financing the implementation of the program. The government shifts the risk of a program being unsuccessful to the lead contractor because it only pays the lead contractor if the lead contractor meets defined performance targets and sufficient direct or indirect reductions in government spending for other programs result from the implementation of the program.

The bill establishes the pay for success contracts for early childhood education services program for the purpose of authorizing the office of state planning and budgeting (OSPB) to enter into state pay for success contracts with one or more lead contractors for the provision of early childhood education services that will reduce the need for the state to provide subsequent education support and other social services. A state pay for success contract must include provisions that:

- ! Clearly define the type, scope, and duration of the early childhood education services that the lead contractor will directly or indirectly provide and the specific outcomes sought to be achieved based on defined performance targets;
- ! Provide for an objective process by which an independent evaluator will determine whether the defined performance targets have been achieved;
- ! Specify the procedures that the lead contractor must follow in order to request payments; and
- ! Specify that the OSPB must approve any request for payment made by the lead contractor and that, unless the contract preauthorizes payments if cost savings are proven in a manner specified in the contract and requires money to be set aside for that purpose, the obligation of the OSPB to make any payment is subject to annual appropriation by the general assembly.

With the approval of the OSPB and the lead contractor, one or more school districts may be additional parties to a pay for success contract to be entered into by the OSPB if the chief financial officer and the board of education of the district or districts review and approve the terms of the proposed contract. Any pay for success contract that includes one or more school districts as additional parties must provide for the allocation of payment responsibilities between the state and each district if the lead contractor meets the defined performance targets specified in the contract.

The pay for success contracts fund is created in the state treasury and consists of a maximum amount of \$25 million of moneys transferred

or appropriated by the general assembly from direct or indirect reductions in state spending resulting from the provision of early childhood education programs under a pay for success contract or any other source, any money received by the state from a school district that has joined a contract as an additional party for the purpose of making payments to a lead contractor, and fund investment earnings. Subject to annual appropriation by the general assembly, the OSPB may expend moneys in the fund for administrative costs and to make payments to the lead contractor as required by a pay for success contract. If a pay for success contract preauthorizes payments to the lead contractor if success is proven in a manner specified in the contract and credits money to the fund for that purpose, that money is continuously appropriated to the OSPB for the purpose of making the payments.

The bill also authorizes school districts, individually or working together in groups of two or more, to create district pay for success contracts for early childhood education services programs. A district pay for success contract must generally include the same types of provisions that a state pay for success contract includes and must be approved by the district board of education and the chief financial officer of each district.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 28.5 to
3 **title 22 as follows:**

4 **ARTICLE 28.5**

5 **Pay for Success Contracts for**

6 **Early Childhood Education Services**

7 **22-28.5-101.** **Short title.** THIS ARTICLE SHALL BE KNOWN AND
8 MAY BE CITED AS THE "PAY FOR SUCCESS CONTRACTS FOR EARLY
9 CHILDHOOD EDUCATION SERVICES ACT".

10 **22-28.5-102.** **Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
11 CONTEXT OTHERWISE REQUIRES:

12 (1) "CONTRACT" MEANS A PAY FOR SUCCESS CONTRACT ENTERED
13 INTO BY:

14 (a) THE OFFICE OF STATE PLANNING AND BUDGETING AND A LEAD

1 CONTRACTOR, OR THE OFFICE, ONE OR MORE SCHOOL DISTRICTS, AND A
2 LEAD CONTRACTOR AS AUTHORIZED BY SECTION 22-28.5-103; OR

3 (b) ONE OR MORE SCHOOL DISTRICTS AND A LEAD CONTRACTOR AS
4 AUTHORIZED BY SECTION 22-28.5-104.

5 (2) "DISTRICT PROGRAM" MEANS A DISTRICT PAY FOR SUCCESS
6 CONTRACTS FOR EARLY CHILDHOOD EDUCATION SERVICES PROGRAM
7 ESTABLISHED BY ONE OR MORE SCHOOL DISTRICTS PURSUANT TO SECTION
8 22-28.5-104.

9 (3) "EARLY CHILDHOOD EDUCATION SERVICES" MEANS SERVICES
10 PROVIDED TO CHILDREN PRIMARILY UNDER FIVE YEARS OLD AND THEIR
11 FAMILIES THAT SUPPORT THE HEALTHY DEVELOPMENT AND SCHOOL
12 READINESS OF CHILDREN WHO ARE AT RISK FOR POOR HEALTH OUTCOMES
13 OR ARE AT RISK FOR NOT BEING SCHOOL-READY.

14 (4) "FUND" MEANS THE PAY FOR SUCCESS CONTRACTS FUND
15 CREATED IN SECTION 22-28.5-103.

16 (5) "LEAD CONTRACTOR" MEANS AN ORGANIZATION OR SCHOOL
17 DISTRICT SELECTED BY THE DIRECTOR OF THE OFFICE OF STATE PLANNING
18 AND BUDGETING TO PARTICIPATE IN THE STATE PROGRAM OR AN
19 ORGANIZATION SELECTED BY ONE OR MORE BOARDS OF EDUCATION TO
20 PARTICIPATE IN A DISTRICT PROGRAM BY:

21 (a) ENTERING INTO A PAY FOR SUCCESS CONTRACT WITH THE
22 OFFICE OF STATE PLANNING AND BUDGETING, WITH THE OFFICE AND ONE
23 OR MORE SCHOOL DISTRICTS, OR WITH ONE OR MORE SCHOOL DISTRICTS,
24 AS APPLICABLE, TO PROVIDE EARLY CHILDHOOD EDUCATION SERVICES
25 DIRECTLY OR THROUGH SUBCONTRACTS WITH OTHER PROVIDERS;

26 (b) OVERSEEING THE PROVISION OF EARLY CHILDHOOD EDUCATION
27 SERVICES BY ANY OTHER PROVIDERS WITH WHICH IT SUBCONTRACTS; AND

1 (c) USING ITS OWN MONEY OR BORROWING MONEY TO PAY THE
2 COSTS OF PROVIDING EARLY CHILDHOOD EDUCATION SERVICES, AND, IF
3 THE EARLY CHILDHOOD EDUCATION SERVICES THAT IT PROVIDES MEET THE
4 DEFINED PERFORMANCE TARGETS ESTABLISHED IN A PAY FOR SUCCESS
5 CONTRACT, RECEIVING SUCCESS PAYMENTS.

6 (6) "PROVIDER" MEANS A PERSON OR ENTITY THAT PROVIDES
7 EARLY CHILDHOOD EDUCATION SERVICES ON A FOR-PROFIT OR NONPROFIT
8 BASIS. "PROVIDER" INCLUDES:

9 (a) A LEAD CONTRACTOR TO THE EXTENT THAT THE LEAD
10 CONTRACTOR PROVIDES EARLY CHILDHOOD EDUCATION SERVICES
11 DIRECTLY RATHER THAN ENTERING INTO SUBCONTRACTS WITH OTHER
12 PROVIDERS FOR THE PROVISION OF SUCH SERVICES; AND

13 (b) A SCHOOL DISTRICT, WHICH MAY BE THE SAME SCHOOL
14 DISTRICT THAT ESTABLISHES AN EARLY CHILDHOOD EDUCATION SERVICES
15 PROGRAM, TO THE EXTENT THAT THE SCHOOL DISTRICT PROVIDES EARLY
16 CHILDHOOD EDUCATION SERVICES.

17 (7) "SCHOOL DISTRICT" MEANS ANY PUBLIC SCHOOL DISTRICT
18 ORGANIZED UNDER THE LAWS OF COLORADO OR AN INSTITUTE CHARTER
19 SCHOOL CREATED PURSUANT TO PART 5 OF ARTICLE 30.5 OF THIS TITLE.
20 "SCHOOL DISTRICT" DOES NOT INCLUDE A JUNIOR COLLEGE DISTRICT.

21 (8) "STATE PROGRAM" MEANS THE PAY FOR SUCCESS CONTRACTS
22 FOR EARLY CHILDHOOD EDUCATION SERVICES PROGRAM ESTABLISHED IN
23 SECTION 22-28.5-103.

24 **22-28.5-103. Establishment of pay for success contracts for**
25 **early childhood education services program - pay for success**
26 **contracts fund - creation.** (1) THERE IS HEREBY ESTABLISHED IN THE
27 OFFICE OF STATE PLANNING AND BUDGETING THE PAY FOR SUCCESS

1 CONTRACTS FOR EARLY CHILDHOOD EDUCATION SERVICES PROGRAM. THE
2 PURPOSE OF THE STATE PROGRAM IS TO PROVIDE AUTHORIZATION, SUBJECT
3 TO SPECIFIED REQUIREMENTS AND LIMITATIONS, FOR THE OFFICE TO ENTER
4 INTO PAY FOR SUCCESS CONTRACTS WITH ONE OR MORE LEAD
5 CONTRACTORS FOR THE PROVISION OF EARLY CHILDHOOD EDUCATION
6 SERVICES.

7 (2) THE OFFICE OF STATE PLANNING AND BUDGETING, OR THE
8 OFFICE AND ONE OR MORE SCHOOL DISTRICTS AS AUTHORIZED BY
9 SUBSECTION (3) OF THIS SECTION, MAY ENTER INTO A CONTRACT WITH A
10 LEAD CONTRACTOR FOR THE PROVISION OF EARLY CHILDHOOD EDUCATION
11 SERVICES. WHEN DEVELOPING AND REVIEWING THE TERMS OF A PAY FOR
12 SUCCESS CONTRACT, THE OFFICE MAY CONSULT WITH THE STATE
13 TREASURER ON FINANCIAL TERMS. THE CONTRACT MUST INCLUDE
14 PROVISIONS THAT:

15 (a) CLEARLY DEFINE THE TYPE, SCOPE, AND DURATION OF THE
16 EARLY CHILDHOOD EDUCATION SERVICES THAT THE LEAD CONTRACTOR
17 WILL DIRECTLY OR INDIRECTLY PROVIDE AND THE SPECIFIC OUTCOMES
18 SOUGHT TO BE ACHIEVED BASED ON DEFINED PERFORMANCE TARGETS;

19 (b) PROVIDE FOR AN OBJECTIVE PROCESS BY WHICH AN
20 INDEPENDENT EVALUATOR WILL DETERMINE WHETHER THE DEFINED
21 PERFORMANCE TARGETS HAVE BEEN ACHIEVED;

22 (c) SPECIFY THE PROCEDURES THAT THE LEAD CONTRACTOR MUST
23 FOLLOW IN ORDER TO REQUEST PAYMENTS; AND

24 (d) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF
25 THIS PARAGRAPH (d), STATE THAT THE OFFICE OF STATE PLANNING AND
26 BUDGETING MUST APPROVE ANY REQUEST FOR PAYMENT MADE BY THE
27 LEAD CONTRACTOR AND THAT THE OBLIGATION OF THE OFFICE OF STATE

1 PLANNING AND BUDGETING TO MAKE ANY PAYMENT IS SUBJECT TO
2 ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY.

3 (II) A CONTRACT MAY REQUIRE ANY STATE DEPARTMENT OR
4 AGENCY THAT IS ANTICIPATED TO HAVE COST SAVINGS RESULTING FROM
5 THE PROVISION OF EARLY CHILDHOOD EDUCATION SERVICES UNDER THE
6 CONTRACT, OR ANY SCHOOL DISTRICT THAT IS AN ADDITIONAL PARTY TO
7 THE CONTRACT TO DEPOSIT MONEY ANTICIPATED TO BE PAID TO A LEAD
8 CONTRACTOR INTO THE FUND IN ADVANCE AND PREAUTHORIZE THE
9 PAYMENT OF SUCH MONEYS TO THE LEAD CONTRACTOR WITHOUT FURTHER
10 APPROPRIATION OR APPROVAL IF DEFINED PERFORMANCE TARGETS ARE
11 MET AS SPECIFIED IN THE CONTRACT.

12 (3) WITH THE APPROVAL OF THE OFFICE OF STATE PLANNING AND
13 BUDGETING AND THE LEAD CONTRACTOR, ONE OR MORE SCHOOL DISTRICTS
14 MAY BE ADDITIONAL PARTIES TO A CONTRACT TO BE ENTERED INTO BY THE
15 OFFICE AS AUTHORIZED BY SUBSECTION (2) OF THIS SECTION IF THE CHIEF
16 FINANCIAL OFFICER AND THE BOARD OF EDUCATION OF THE DISTRICT OR
17 DISTRICTS REVIEW AND APPROVE THE TERMS OF THE PROPOSED CONTRACT.
18 ANY CONTRACT THAT INCLUDES ONE OR MORE SCHOOL DISTRICTS AS
19 ADDITIONAL PARTIES SHALL PROVIDE FOR THE ALLOCATION OF PAYMENT
20 RESPONSIBILITIES BETWEEN THE STATE AND EACH DISTRICT IF THE LEAD
21 CONTRACTOR MEETS THE DEFINED PERFORMANCE TARGETS SPECIFIED IN
22 THE CONTRACT.

23 (4) (a) THE PAY FOR SUCCESS CONTRACTS FUND IS HEREBY
24 CREATED IN THE STATE TREASURY. THE PRINCIPAL OF THE FUND CONSISTS
25 OF:

26 (I) MONEYS APPROPRIATED OR TRANSFERRED TO THE FUND BY THE
27 GENERAL ASSEMBLY THAT HAVE BECOME AVAILABLE OR ARE EXPECTED

1 TO BECOME AVAILABLE DUE TO DIRECT OR INDIRECT REDUCTIONS IN STATE
2 SPENDING RESULTING FROM THE PROVISION OF EARLY CHILDHOOD
3 EDUCATION PROGRAMS UNDER A CONTRACT ENTERED INTO PURSUANT TO
4 SUBSECTION (2) OF THIS SECTION;

5 (II) ANY MONEYS RECEIVED BY THE STATE FROM A STATE
6 DEPARTMENT OR AGENCY OR A SCHOOL DISTRICT THAT HAS JOINED A
7 CONTRACT AS AN ADDITIONAL PARTY AS AUTHORIZED BY SUBSECTION (3)
8 OF THIS SECTION THAT IS DEPOSITED INTO THE FUND AS AUTHORIZED BY
9 SUBPARAGRAPH (II) OF PARAGRAPH (d) OF SUBSECTION (2) OF THIS
10 SECTION FOR THE PURPOSE OF MAKING PAYMENTS TO A LEAD
11 CONTRACTOR; AND

12 (III) ANY OTHER MONEYS THAT THE GENERAL ASSEMBLY MAY
13 APPROPRIATE OR TRANSFER TO THE FUND.

14 (b) THE TOTAL AMOUNT OF STATE MONEY CREDITED TO THE FUND
15 PURSUANT TO SUBPARAGRAPHS (I) AND (III) OF PARAGRAPH (a) OF THIS
16 SUBSECTION (4) SHALL NOT EXCEED TWENTY-FIVE MILLION DOLLARS.
17 INTEREST AND INCOME EARNED ON THE DEPOSIT AND INVESTMENT OF THE
18 FUND IS CREDITED TO THE FUND. SUBJECT TO ANNUAL APPROPRIATION BY
19 THE GENERAL ASSEMBLY, THE OFFICE OF STATE PLANNING AND
20 BUDGETING MAY EXPEND MONEYS IN THE FUND TO MAKE PAYMENTS TO
21 THE LEAD CONTRACTOR AS REQUIRED BY A CONTRACT AND TO PAY ANY
22 ADMINISTRATIVE EXPENSES INCURRED IN CONNECTION WITH A CONTRACT;
23 EXCEPT THAT ANY MONEYS IN THE FUND THAT ARE PREAUTHORIZED FOR
24 MAKING PAYMENTS UNDER SUBPARAGRAPH (II) OF PARAGRAPH (d) OF
25 SUBSECTION (2) OF THIS SECTION ARE CONTINUOUSLY APPROPRIATED TO
26 THE OFFICE OF STATE PLANNING AND BUDGETING FOR THE PURPOSE OF
27 MAKING SUCH PAYMENTS.

1 **22-28.5-104. School district pay for success contracts for early**
2 **childhood education services program - authorization - district pay**
3 **for success contracts.** (1) SUBJECT TO THE REQUIREMENTS AND
4 LIMITATIONS SPECIFIED IN SUBSECTION (2) OF THIS SECTION, A SCHOOL
5 DISTRICT, OR TWO OR MORE SCHOOL DISTRICTS WORKING TOGETHER, MAY
6 ESTABLISH A DISTRICT PAY FOR SUCCESS CONTRACTS FOR EARLY
7 CHILDHOOD EDUCATION SERVICES PROGRAM. THE PURPOSE OF A DISTRICT
8 PROGRAM IS TO AUTHORIZE A SCHOOL DISTRICT, OR TWO OR MORE SCHOOL
9 DISTRICTS WORKING TOGETHER, TO ENTER INTO PAY FOR SUCCESS
10 CONTRACTS WITH ONE OR MORE LEAD CONTRACTORS FOR THE PROVISION
11 OF EARLY CHILDHOOD EDUCATION SERVICES.

12 (2) A SCHOOL DISTRICT, OR TWO OR MORE SCHOOL DISTRICTS
13 WORKING TOGETHER, MAY ENTER INTO A CONTRACT WITH A LEAD
14 CONTRACTOR FOR THE PROVISION OF EARLY CHILDHOOD EDUCATION
15 SERVICES SUBJECT TO THE FOLLOWING REQUIREMENTS AND LIMITATIONS:

16 (a) THE CONTRACT MUST INCLUDE PROVISIONS THAT:

17 (I) CLEARLY DEFINE THE TYPE, SCOPE, AND DURATION OF THE
18 EARLY CHILDHOOD EDUCATION SERVICES THAT THE LEAD CONTRACTOR
19 WILL DIRECTLY OR INDIRECTLY PROVIDE AND THE SPECIFIC OUTCOMES
20 SOUGHT TO BE ACHIEVED BASED ON DEFINED PERFORMANCE TARGETS;

21 (II) PROVIDE FOR AN OBJECTIVE PROCESS BY WHICH AN
22 INDEPENDENT EVALUATOR WILL DETERMINE WHETHER THE DEFINED
23 PERFORMANCE TARGETS HAVE BEEN ACHIEVED;

24 (III) SPECIFY THE PROCEDURES THAT THE LEAD CONTRACTOR
25 MUST FOLLOW IN ORDER TO REQUEST PAYMENTS; AND

26 (IV) STATE THAT THE BOARD OF EDUCATION AND THE CHIEF
27 FINANCIAL OFFICER OF A DISTRICT MUST APPROVE ANY REQUEST FOR

1 PAYMENT MADE TO THE DISTRICT BY THE LEAD CONTRACTOR. ANY
2 CONTRACT THAT INCLUDES MULTIPLE SCHOOL DISTRICTS AS PARTIES
3 SHALL PROVIDE FOR THE ALLOCATION OF PAYMENT RESPONSIBILITIES
4 BETWEEN THE DISTRICTS IF THE LEAD CONTRACTOR MEETS THE DEFINED
5 PERFORMANCE TARGETS SPECIFIED IN THE CONTRACT.

6 (b) THE CHIEF FINANCIAL OFFICER AND THE BOARD OF EDUCATION
7 OF EACH DISTRICT THAT IS TO BE A PARTY TO A PROPOSED CONTRACT MUST
8 REVIEW THE TERMS OF THE PROPOSED CONTRACT, AND A SCHOOL DISTRICT
9 MAY NOT ENTER INTO THE CONTRACT UNTIL THE CHIEF FINANCIAL OFFICER
10 AND THE BOARD OF EDUCATION OF THE DISTRICT APPROVE THE CONTRACT.

11 **SECTION 2. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, and safety.