SENATE BILL 14-185

SENATE SPONSORSHIP
Johnston and Zenzinger,

HOUSE SPONSORSHIP
Pettersen,

Senate Committees House Committees
Education

A BILL FOR AN ACT

CONCERNING PAY FOR SUCCESS CONTRACTS FOR SUCCESSFUL EARLY 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...
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.

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

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

ARTICLE 28.5
Pay for Success Contracts for Early Childhood Education Services

22-28.5-101. Short title. This article shall be known and may be cited as the "Pay for Success Contracts for Early Childhood Education Services Act".

22-28.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Contract" means a pay for success contract entered into by:

(a) The Office of State Planning and Budgeting and a lead
CONTRACTOR, OR THE OFFICE, ONE OR MORE SCHOOL DISTRICTS, AND A LEAD CONTRACTOR AS AUTHORIZED BY SECTION 22-28.5-103; OR

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

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

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

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

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

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

(b) OVERSEEING THE PROVISION OF EARLY CHILDHOOD EDUCATION SERVICES BY ANY OTHER PROVIDERS WITH WHICH IT SUBCONTRACTS; AND
c) Using its own money or borrowing money to pay the costs of providing early childhood education services, and, if the early childhood education services that it provides meet the defined performance targets established in a pay for success contract, receiving success payments.

6. "Provider" means a person or entity that provides early childhood education services on a for-profit or nonprofit basis. "Provider" includes:

(a) A lead contractor to the extent that the lead contractor provides early childhood education services directly rather than entering into subcontracts with other providers for the provision of such services; and

(b) A school district, which may be the same school district that establishes an early childhood education services program, to the extent that the school district provides early childhood education services.

7. "School district" means any public school district organized under the laws of Colorado or an institute charter school created pursuant to part 5 of article 30.5 of this title. "School district" does not include a junior college district.

8. "State program" means the pay for success contracts for early childhood education services program established in section 22-28.5-103.

22-28.5-103. Establishment of pay for success contracts for early childhood education services program - pay for success contracts fund - creation. (1) There is hereby established in the office of state planning and budgeting the pay for success
contracts for early childhood education services program. the
purpose of the state program is to provide authorization, subject
to specified requirements and limitations, for the office to enter
into pay for success contracts with one or more lead
contractors for the provision of early childhood education
services.

(2) the office of state planning and budgeting, or the
office and one or more school districts as authorized by
subsection (3) of this section, may enter into a contract with a
lead contractor for the provision of early childhood education
services. when developing and reviewing the terms of a pay for
success contract, the office may consult with the state
treasurer on financial terms. the contract must include
provisions that:

(a) 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;

(b) provide for an objective process by which an
independent evaluator will determine whether the defined
performance targets have been achieved;

(c) specify the procedures that the lead contractor must
follow in order to request payments; and

(d)(i) except as otherwise provided in subparagraph (ii) of
this paragraph (d), state that the office of state planning and
budgeting must approve any request for payment made by the
lead contractor and that the obligation of the office of state
PLANNING AND BUDGETING TO MAKE ANY PAYMENT IS SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY.

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

(3) WITH THE APPROVAL OF THE OFFICE OF STATE PLANNING AND BUDGETING AND THE LEAD CONTRACTOR, ONE OR MORE SCHOOL DISTRICTS MAY BE ADDITIONAL PARTIES TO A CONTRACT TO BE ENTERED INTO BY THE OFFICE AS AUTHORIZED BY SUBSECTION (2) OF THIS SECTION 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 CONTRACT THAT INCLUDES ONE OR MORE SCHOOL DISTRICTS AS ADDITIONAL PARTIES SHALL 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.

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

(I) MONEYS APPROPRIATED OR TRANSFERRED TO THE FUND BY THE GENERAL ASSEMBLY THAT HAVE BECOME AVAILABLE OR ARE EXPECTED
TO BECOME AVAILABLE DUE TO DIRECT OR INDIRECT REDUCTIONS IN STATE
SPENDING RESULTING FROM THE PROVISION OF EARLY CHILDHOOD
EDUCATION PROGRAMS UNDER A CONTRACT ENTERED INTO PURSUANT TO
SUBSECTION (2) OF THIS SECTION;

(II) ANY MONEYS RECEIVED BY THE STATE FROM A STATE
DEPARTMENT OR AGENCY OR A SCHOOL DISTRICT THAT HAS JOINED A
CONTRACT AS AN ADDITIONAL PARTY AS AUTHORIZED BY SUBSECTION (3)
of this section that is deposited into the fund as authorized by
subparagraph (II) of paragraph (d) of subsection (2) of this
section for the purpose of making payments to a lead
contractor; and

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

(b) THE TOTAL AMOUNT OF STATE MONEY CREDITED TO THE FUND
PURSUANT TO SUBPARAGRAPHS (I) AND (III) OF PARAGRAPH (a) OF THIS
SUBSECTION (4) SHALL NOT EXCEED TWENTY-FIVE MILLION DOLLARS.
INTEREST AND INCOME EARNED ON THE DEPOSIT AND INVESTMENT OF THE
FUND IS CREDITED TO THE FUND. SUBJECT TO ANNUAL APPROPRIATION BY
THE GENERAL ASSEMBLY, THE OFFICE OF STATE PLANNING AND
BUDGETING MAY EXPEND MONEYS IN THE FUND TO MAKE PAYMENTS TO
THE LEAD CONTRACTOR AS REQUIRED BY A CONTRACT AND TO PAY ANY
ADMINISTRATIVE EXPENSES INCURRED IN CONNECTION WITH A CONTRACT;
EXCEPT THAT ANY MONEYS IN THE FUND THAT ARE PREAUTHORIZED FOR
MAKING PAYMENTS UNDER SUBPARAGRAPH (II) OF PARAGRAPH (d) OF
SUBSECTION (2) OF THIS SECTION ARE CONTINUOUSLY APPROPRIATED TO
THE OFFICE OF STATE PLANNING AND BUDGETING FOR THE PURPOSE OF
MAKING SUCH PAYMENTS.
22-28.5-104. School district pay for success contracts for early childhood education services program - authorization - district pay for success contracts. (1) Subject to the requirements and limitations specified in subsection (2) of this section, a school district, or two or more school districts working together, may establish a district pay for success contracts for early childhood education services program. The purpose of a district program is to authorize a school district, or two or more school districts working together, to enter into pay for success contracts with one or more lead contractors for the provision of early childhood education services.

(2) A school district, or two or more school districts working together, may enter into a contract with a lead contractor for the provision of early childhood education services subject to the following requirements and limitations:

(a) The contract must include provisions that:

(I) 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;

(II) Provide for an objective process by which an independent evaluator will determine whether the defined performance targets have been achieved;

(III) Specify the procedures that the lead contractor must follow in order to request payments; and

(IV) State that the board of education and the chief financial officer of a district must approve any request for
PAYMENT MADE TO THE DISTRICT BY THE LEAD CONTRACTOR. ANY CONTRACT THAT INCLUDES MULTIPLE SCHOOL DISTRICTS AS PARTIES SHALL PROVIDE FOR THE ALLOCATION OF PAYMENT RESPONSIBILITIES BETWEEN THE DISTRICTS IF THE LEAD CONTRACTOR MEETS THE DEFINED PERFORMANCE TARGETS SPECIFIED IN THE CONTRACT.

(b) The chief financial officer and the board of education of each district that is to be a party to a proposed contract must review the terms of the proposed contract, and a school district may not enter into the contract until the chief financial officer and the board of education of the district approve the contract.

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