

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0605.01 Jason Gelender x4330

HOUSE BILL 15-1317

HOUSE SPONSORSHIP

Garnett and Rankin,

SENATE SPONSORSHIP

Johnston and Martinez Humenik,

House Committees
Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 CONCERNING PAY FOR SUCCESS CONTRACTS.

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 if the

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.

lead contractor meets defined performance targets, 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 if sufficient direct or indirect reductions in government spending for other programs result from the implementation of the program.

The bill establishes the state pay for success contracts 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 social services that will reduce the need for the state to provide other social services in the future.

A state pay for success contract must:

- ! Clearly define the type, scope, and duration of the social services that the lead contractor will directly or indirectly provide, which it must provide by implementing a new program or expanding the population served by an existing program, or both, 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 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 local governments may be additional parties to a pay for success contract to be entered into by the OSPB if the chief financial officer and the governing body of each participating local government review and approve the terms of the proposed contract. Any pay for success contract that includes one or more local governments as additional parties must provide for the allocation of payment responsibilities between the state and each local government if the lead contractor meets the defined performance targets specified in the contract.

The OSPB must enact a sustainability plan based on successful outcomes and performance at the end of a pilot period for those programs or services that yield savings as assessed by an independent evaluator. If requested by the OSPB or the state auditor, the independent evaluator must provide its assessment and the data underlying its assessment to the state auditor for review. The state, a lead contractor, or any other person involved in the provision of services being provided through a program

that is implemented through a pay for success contract are not exempted from any federal or state law or rule that protects the confidentiality of or restricts the use of financial, health, or other personal information or records of individuals who apply for or are served by the program.

The pay for success contracts fund is created in the state treasury and consists of money transferred or appropriated by the general assembly from direct or indirect reductions in state spending resulting from the provision of social services under a pay for success contract or from any other source, any money received by the state from a local government 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.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 4 to article
3 37 of title 24 as follows:

4 **PART 4**

5 **PAY FOR SUCCESS CONTRACTS**

6 **24-37-401. Short title.** THIS PART 4 SHALL BE KNOWN AND MAY
7 BE CITED AS THE "PAY FOR SUCCESS CONTRACTS ACT".

8 **24-37-402. Definitions.** AS USED IN THIS PART 4, UNLESS THE
9 CONTEXT OTHERWISE REQUIRES:

10 (1) "CONTRACT" MEANS A PAY FOR SUCCESS CONTRACT ENTERED
11 INTO BY THE OFFICE AND A LEAD CONTRACTOR, OR THE OFFICE, ONE OR
12 MORE LOCAL GOVERNMENTS, AND A LEAD CONTRACTOR AS AUTHORIZED
13 BY SECTION 24-37-403.

14 (2) "FUND" MEANS THE PAY FOR SUCCESS CONTRACTS FUND
15 CREATED IN SECTION 24-37-403.

16 (3) "LEAD CONTRACTOR" MEANS AN ORGANIZATION OR LOCAL
17 GOVERNMENT SELECTED BY THE DIRECTOR OF THE OFFICE TO PARTICIPATE

1 IN THE STATE PROGRAM BY:

2 (a) ENTERING INTO A PAY FOR SUCCESS CONTRACT WITH THE
3 OFFICE OR WITH THE OFFICE AND ONE OR MORE LOCAL GOVERNMENTS, AS
4 APPLICABLE, TO PROVIDE SOCIAL SERVICES DIRECTLY OR THROUGH
5 SUBCONTRACTS WITH OTHER PROVIDERS;

6 (b) OVERSEEING THE PROVISION OF SOCIAL SERVICES BY ANY
7 OTHER PROVIDERS WITH WHICH IT SUBCONTRACTS; AND

8 (c) USING ITS OWN MONEY OR BORROWING MONEY TO PAY THE
9 COSTS OF PROVIDING SOCIAL SERVICES, AND, IF THE SOCIAL SERVICES THAT
10 IT PROVIDES MEET THE DEFINED PERFORMANCE TARGETS ESTABLISHED IN
11 A PAY FOR SUCCESS CONTRACT, RECEIVING SUCCESS PAYMENTS.

12 (4) "LOCAL GOVERNMENT" MEANS A COUNTY, MUNICIPALITY, OR
13 SCHOOL DISTRICT.

14 (5) "PROVIDER" MEANS A PERSON OR ENTITY THAT PROVIDES
15 SOCIAL SERVICES ON A FOR-PROFIT OR NONPROFIT BASIS. "PROVIDER"
16 INCLUDES:

17 (a) A LEAD CONTRACTOR THAT PROVIDES SOCIAL SERVICES
18 DIRECTLY RATHER THAN ENTERING INTO SUBCONTRACTS WITH OTHER
19 PROVIDERS FOR THE PROVISION OF SUCH SERVICES; AND

20 (b) A LOCAL GOVERNMENT, WHICH MAY BE THE SAME LOCAL
21 GOVERNMENT THAT ESTABLISHES A SOCIAL SERVICES PROGRAM, THAT
22 PROVIDES SOCIAL SERVICES.

23 (6) "SCHOOL DISTRICT" MEANS ANY PUBLIC SCHOOL DISTRICT
24 ORGANIZED UNDER STATE LAW OR AN INSTITUTE CHARTER SCHOOL
25 CREATED PURSUANT TO PART 5 OF ARTICLE 30.5 OF TITLE 22, C.R.S.
26 "SCHOOL DISTRICT" DOES NOT INCLUDE A JUNIOR COLLEGE DISTRICT.

27 (7) "STATE PROGRAM" MEANS THE PAY FOR SUCCESS CONTRACTS

1 PROGRAM ESTABLISHED IN SECTION 24-37-403.

2 (8) "SUCCESS PAYMENTS" MEANS PAYMENTS MADE TO THE LEAD
3 CONTRACTOR FOR MEETING DEFINED PERFORMANCE TARGETS SPECIFIED
4 IN A PAY FOR SUCCESS CONTRACT.

5 **24-37-403. Establishment of state pay for success contracts**
6 **program - pay for success contracts fund - creation.** (1) THERE IS
7 HEREBY ESTABLISHED IN THE OFFICE THE STATE PAY FOR SUCCESS
8 CONTRACTS PROGRAM. THE PURPOSE OF THE STATE PROGRAM IS TO
9 PROVIDE AUTHORIZATION, SUBJECT TO SPECIFIED REQUIREMENTS AND
10 LIMITATIONS, FOR THE OFFICE TO ENTER INTO PAY FOR SUCCESS
11 CONTRACTS WITH ONE OR MORE LEAD CONTRACTORS FOR THE PROVISION
12 OF SOCIAL SERVICES.

13 (2) BEFORE ENTERING INTO A PAY FOR SUCCESS CONTRACT
14 AUTHORIZED BY THIS SECTION, THE OFFICE, ONE OR MORE LOCAL
15 GOVERNMENTS, OR THE OFFICE AND ONE OR MORE LOCAL GOVERNMENTS
16 SHALL CONDUCT A REQUEST FOR PROPOSAL PROCESS. THE REQUEST FOR
17 PROPOSAL MUST DESCRIBE THE DESIRED POPULATION TO BE SERVED,
18 DESIRED OUTCOMES, AND THE POTENTIAL DURATION OF A PAY FOR
19 SUCCESS PROGRAM AND MAY INCLUDE PERFORMANCE TARGETS. THE
20 OFFICE SHALL MAKE A REQUEST FOR PROPOSAL ISSUED PURSUANT TO THIS
21 SUBSECTION (2) PUBLICLY AVAILABLE ON ITS WEB SITE UPON ITS
22 ISSUANCE.

23 (3) THE OFFICE, OR THE OFFICE AND ONE OR MORE LOCAL
24 GOVERNMENTS AS AUTHORIZED BY SUBSECTION (4) OF THIS SECTION, MAY
25 ENTER INTO A CONTRACT WITH A LEAD CONTRACTOR FOR THE PROVISION
26 OF SOCIAL SERVICES. WHEN DEVELOPING AND REVIEWING THE TERMS OF
27 A PAY FOR SUCCESS CONTRACT, THE OFFICE MAY CONSULT WITH THE

1 STATE TREASURER ON FINANCIAL TERMS AND WITH EXPERTS TO PROVIDE
2 ADVICE REGARDING DEFINITION OF APPROPRIATE PERFORMANCE TARGETS.
3 A CONTRACT SHALL NOT REQUIRE OR AUTHORIZE THE STATE TO USE
4 FEDERAL MONEYS TO MAKE SUCCESS PAYMENTS UNLESS FEDERAL LAW OR
5 FEDERAL REGULATIONS AUTHORIZE THE USE OF FEDERAL MONEYS FOR
6 THAT PURPOSE. BEFORE IT ENTERS INTO A CONTRACT, THE OFFICE SHALL
7 MAKE THE CONTRACT AVAILABLE TO THE PUBLIC ON THE OFFICE'S WEB
8 SITE AND PROVIDE AN OPPORTUNITY FOR PUBLIC COMMENT REGARDING
9 THE CONTRACT. PRIOR TO ENTERING INTO THE TERMS OF A CONTRACT, A
10 CONTRACT MUST:

11 (a) CLEARLY DEFINE THE TYPE, SCOPE, AND DURATION OF THE
12 SOCIAL SERVICES THAT THE LEAD CONTRACTOR WILL DIRECTLY OR
13 INDIRECTLY PROVIDE, WHICH IT MUST PROVIDE BY IMPLEMENTING A NEW
14 PROGRAM OR EXPANDING THE POPULATION SERVED BY AN EXISTING
15 PROGRAM, OR BOTH, AND THE SPECIFIC OUTCOMES SOUGHT BASED ON
16 DEFINED PERFORMANCE TARGETS;

17 (b) DETAIL THE ROLES AND RESPONSIBILITIES OF EACH PARTY TO
18 THE CONTRACT;

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

22 (d) SPECIFY THE PROCEDURES THAT THE LEAD CONTRACTOR MUST
23 FOLLOW TO REQUEST PAYMENTS AND A REPAYMENT SCHEDULE;

24 (e) STATE THAT ANY REQUEST FOR PAYMENT MADE BY THE LEAD
25 CONTRACTOR IS SUBJECT TO APPROVAL BY THE OFFICE AND THAT THE
26 OBLIGATION OF THE OFFICE TO MAKE ANY PAYMENT IS SUBJECT TO
27 ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY; AND

1 (f) INCLUDE A CLAUSE THAT ALLOWS EARLY TERMINATION OF THE
2 CONTRACT IF A LEAD CONTRACTOR OR AN INVESTOR WHO IS FUNDING THE
3 ACTIVITIES OF A LEAD CONTRACTOR TERMINATES FUNDING OR FAILS TO
4 MEET FUNDING COMMITMENTS.

5 (4) WITH THE APPROVAL OF THE OFFICE AND THE LEAD
6 CONTRACTOR, ONE OR MORE LOCAL GOVERNMENTS MAY BE ADDITIONAL
7 PARTIES TO A CONTRACT TO BE ENTERED INTO BY THE OFFICE AS
8 AUTHORIZED BY SUBSECTION (3) OF THIS SECTION IF THE CHIEF FINANCIAL
9 OFFICER AND THE GOVERNING BODY OF EACH PARTICIPATING LOCAL
10 GOVERNMENT REVIEW AND APPROVE THE TERMS OF THE PROPOSED
11 CONTRACT. ANY CONTRACT THAT INCLUDES ONE OR MORE LOCAL
12 GOVERNMENTS AS ADDITIONAL PARTIES SHALL PROVIDE FOR THE
13 ALLOCATION OF PAYMENT RESPONSIBILITIES BETWEEN THE STATE AND
14 EACH LOCAL GOVERNMENT IF THE LEAD CONTRACTOR MEETS THE DEFINED
15 PERFORMANCE TARGETS SPECIFIED IN THE CONTRACT.

16 (5) THE OFFICE SHALL ENACT A SUSTAINABILITY PLAN BASED ON
17 SUCCESSFUL OUTCOMES AND PERFORMANCE AT THE END OF A PILOT
18 PERIOD FOR THOSE PROGRAMS OR SERVICES THAT YIELD SAVINGS AS
19 ASSESSED BY AN INDEPENDENT EVALUATOR. IF REQUESTED BY THE OFFICE
20 OR THE STATE AUDITOR, THE INDEPENDENT EVALUATOR SHALL PROVIDE
21 ITS ASSESSMENT AND THE DATA UNDERLYING ITS ASSESSMENT TO THE
22 STATE AUDITOR FOR REVIEW.

23 (6) (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 SOCIAL SERVICES
3 PROGRAMS UNDER A CONTRACT ENTERED INTO PURSUANT TO SUBSECTION
4 (2) OF THIS SECTION; AND

5 (II) ANY OTHER MONEY THAT THE GENERAL ASSEMBLY
6 APPROPRIATES OR TRANSFERS TO THE FUND.

7 (b) INTEREST AND INCOME EARNED ON THE DEPOSIT AND
8 INVESTMENT OF MONEY IN THE FUND IS CREDITED TO THE FUND. SUBJECT
9 TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY, THE OFFICE
10 SHALL EXPEND MONEYS IN THE FUND TO MAKE PAYMENTS TO THE LEAD
11 CONTRACTOR AS REQUIRED BY A CONTRACT AND TO PAY ANY
12 ADMINISTRATIVE EXPENSES INCURRED IN CONNECTION WITH A CONTRACT.

13 (7) FUNDING PROVIDED BY A NONGOVERNMENTAL ENTITY FOR A
14 PROGRAM TO BE IMPLEMENTED UNDER THE TERMS OF A PAY FOR SUCCESS
15 CONTRACT IS NOT A GRANT, AS DEFINED IN SECTION 24-75-1301, EVEN IF
16 THE FUNDING IS NOT ULTIMATELY REQUIRED TO BE REPAID BECAUSE THE
17 ENTITY RECEIVES CONTRACTUAL CONSIDERATION FROM THE STATE IN
18 EXCHANGE FOR THE FUNDING IN THE FORM OF A PROMISE TO MAKE
19 SUCCESS PAYMENTS IF THE PROGRAM IS SUCCESSFUL.

20 (8) NOTHING IN THIS SECTION EXEMPTS THE STATE, A LEAD
21 CONTRACTOR, OR ANY OTHER PERSON INVOLVED IN THE PROVISION OF
22 SERVICES BEING PROVIDED THROUGH A PROGRAM THAT IS IMPLEMENTED
23 THROUGH A PAY FOR SUCCESS CONTRACT FROM THE REQUIREMENTS OF
24 SECTION 26-1-114, C.R.S., OR ANY OTHER FEDERAL OR STATE LAW OR
25 RULE THAT PROTECTS THE CONFIDENTIALITY OF OR RESTRICTS THE USE OF
26 FINANCIAL, HEALTH, OR OTHER PERSONAL INFORMATION OR RECORDS OF
27 INDIVIDUALS WHO APPLY FOR OR ARE SERVED BY THE PROGRAM.

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