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HOUSE BILL 15-1317

BY REPRESENTATIVE(S) Garnett and Rankin, Arndt, Becker K., Duran, Fields, Hamner, Lee, Lontine, Moreno, Pabon, Rosenthal, Roupe, Salazar, Thurlow, Vigil, Williams, Winter, Hullinghorst;
also SENATOR(S) Johnston and Martinez Humenik, Aguilar, Heath, Hill, Kefalas, Kerr, Scheffel, Cadman.

CONCERNING PAY FOR SUCCESS CONTRACTS.

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

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

PART 4
PAY FOR SUCCESS CONTRACTS

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

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

(1) "CONTRACT" MEANS A PAY FOR SUCCESS CONTRACT ENTERED

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

INTO BY THE OFFICE AND A LEAD CONTRACTOR, OR THE OFFICE, ONE OR MORE LOCAL GOVERNMENTS, AND A LEAD CONTRACTOR AS AUTHORIZED BY SECTION 24-37-403.

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

(3) "INVESTOR" MEANS A PERSON OR ENTITY THAT IS NOT A LEAD CONTRACTOR OR PROVIDER AND THAT PROVIDES WORKING CAPITAL TO FUND THE PROVISION OF SERVICES UNDER A CONTRACT.

(4) "LEAD CONTRACTOR" MEANS AN ORGANIZATION OR LOCAL GOVERNMENT SELECTED BY THE DIRECTOR OF THE OFFICE TO PARTICIPATE IN THE STATE PROGRAM BY:

(a) ENTERING INTO A PAY FOR SUCCESS CONTRACT WITH THE OFFICE OR WITH THE OFFICE AND ONE OR MORE LOCAL GOVERNMENTS, AS APPLICABLE, TO PROVIDE PROGRAM-ELIGIBLE INTERVENTIONS DIRECTLY OR THROUGH SUBCONTRACTS WITH OTHER PROVIDERS;

(b) OVERSEEING THE PROVISION OF PROGRAM-ELIGIBLE INTERVENTIONS BY ANY OTHER PROVIDERS WITH WHICH IT SUBCONTRACTS; AND

(c) USING ITS OWN MONEY OR BORROWING MONEY TO PAY THE COSTS OF PROVIDING PROGRAM-ELIGIBLE INTERVENTIONS THROUGHOUT THE CONTRACT AS NEGOTIATED BY THE PARTIES AND, IF THE PROGRAM-ELIGIBLE INTERVENTIONS THAT IT PROVIDES MEET THE DEFINED PERFORMANCE TARGETS ESTABLISHED IN A PAY FOR SUCCESS CONTRACT, RECEIVING SUCCESS PAYMENTS.

(5) "LOCAL GOVERNMENT" MEANS A COUNTY, MUNICIPALITY, OR SCHOOL DISTRICT.

(6) "PROGRAM-ELIGIBLE INTERVENTIONS" MEANS SERVICES PROVIDED IN ORDER TO IMPROVE THE LIVES AND LIVING CONDITIONS OF INDIVIDUALS BY INCREASING ECONOMIC OPPORTUNITY AND THE LIKELIHOOD OF HEALTHY FUTURES AND PROMOTING CHILD AND YOUTH DEVELOPMENT.

(7) "PROVIDER" MEANS A PERSON OR ENTITY THAT PROVIDES PROGRAM-ELIGIBLE INTERVENTIONS ON A FOR-PROFIT OR NONPROFIT BASIS. "PROVIDER" INCLUDES:

(a) A LEAD CONTRACTOR THAT PROVIDES PROGRAM-ELIGIBLE INTERVENTIONS DIRECTLY RATHER THAN ENTERING INTO SUBCONTRACTS WITH OTHER PROVIDERS FOR THE PROVISION OF SUCH INTERVENTIONS; AND

(b) A LOCAL GOVERNMENT, WHICH MAY BE THE SAME LOCAL GOVERNMENT THAT ESTABLISHES A PROGRAM-ELIGIBLE INTERVENTIONS PROGRAM, THAT PROVIDES PROGRAM-ELIGIBLE INTERVENTIONS.

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

(9) "STATE PROGRAM" MEANS THE PAY FOR SUCCESS CONTRACTS PROGRAM ESTABLISHED IN SECTION 24-37-403.

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

24-37-403. Establishment of state pay for success contracts program - pay for success contracts fund - creation. (1) THERE IS HEREBY ESTABLISHED IN THE OFFICE THE STATE PAY FOR SUCCESS CONTRACTS 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 PROGRAM-ELIGIBLE INTERVENTIONS.

(2) BEFORE ENTERING INTO A PAY FOR SUCCESS CONTRACT AUTHORIZED BY THIS SECTION, THE OFFICE, ONE OR MORE LOCAL GOVERNMENTS, OR THE OFFICE AND ONE OR MORE LOCAL GOVERNMENTS SHALL CONDUCT A REQUEST FOR PROPOSAL PROCESS. THE REQUEST FOR PROPOSAL MUST DESCRIBE THE DESIRED POPULATION TO BE SERVED, DESIRED OUTCOMES, AND THE POTENTIAL DURATION OF A PAY FOR SUCCESS PROGRAM AND MAY INCLUDE PERFORMANCE TARGETS. THE OFFICE SHALL

MAKE A REQUEST FOR PROPOSAL ISSUED PURSUANT TO THIS SUBSECTION (2) PUBLICLY AVAILABLE ON ITS WEB SITE UPON ITS ISSUANCE.

(3) THE OFFICE, OR THE OFFICE AND ONE OR MORE LOCAL GOVERNMENTS AS AUTHORIZED BY SUBSECTION (4) OF THIS SECTION, MAY ENTER INTO A CONTRACT WITH A LEAD CONTRACTOR FOR THE PROVISION OF PROGRAM-ELIGIBLE INTERVENTIONS. ENTRY INTO SUCH A CONTRACT IS GENERALLY SUBJECT TO THE REQUIREMENTS OF THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF THIS TITLE, AND THE OFFICE IS ENCOURAGED, BUT NOT REQUIRED, TO USE THE COMPETITIVE SEALED PROPOSALS PROCESS SPECIFIED IN SECTION 24-103-203. WHEN DEVELOPING AND REVIEWING THE TERMS OF A PAY FOR SUCCESS CONTRACT, THE OFFICE MAY CONSULT WITH THE STATE TREASURER ON FINANCIAL TERMS AND WITH EXPERTS TO PROVIDE ADVICE REGARDING DEFINITION OF APPROPRIATE PERFORMANCE TARGETS. A CONTRACT SHALL NOT REQUIRE OR AUTHORIZE THE STATE TO USE FEDERAL MONEYS TO MAKE SUCCESS PAYMENTS UNLESS FEDERAL LAW OR FEDERAL REGULATIONS AUTHORIZE THE USE OF FEDERAL MONEYS FOR THAT PURPOSE. BEFORE IT ENTERS INTO A CONTRACT, THE OFFICE SHALL MAKE THE CONTRACT AVAILABLE TO THE PUBLIC ON THE OFFICE'S WEB SITE AND PROVIDE AN OPPORTUNITY FOR PUBLIC COMMENT REGARDING THE CONTRACT. PRIOR TO ENTERING INTO THE TERMS OF A CONTRACT, A CONTRACT MUST:

(a) CLEARLY DEFINE THE TYPE, SCOPE, AND DURATION OF THE PROGRAM-ELIGIBLE INTERVENTIONS 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 BASED ON DEFINED PERFORMANCE TARGETS. THE INTERVENTIONS THAT A LEAD CONTRACTOR DIRECTLY OR INDIRECTLY PROVIDES MUST NOT SUPPLANT ANY EXISTING STATE, LOCAL GOVERNMENT, OR SCHOOL DISTRICT EMPLOYEE WHO IS PROVIDING THE SAME INTERVENTIONS THAT THE LEAD CONTRACTOR WILL DIRECTLY OR INDIRECTLY PROVIDE.

(b) DETAIL THE ROLES AND RESPONSIBILITIES OF EACH PARTY TO THE CONTRACT AND IDENTIFIED SUBCONTRACTORS;

(c) STATE THAT ONCE THE CONTRACT IS EXECUTED, AN INVESTOR THAT IS FUNDING THE ACTIVITIES OF A LEAD CONTRACTOR UNDER THE TERMS OF THE CONTRACT IS PROHIBITED FROM DICTATING THE MANNER OF

DELIVERY OF SERVICES TO BE PROVIDED UNDER THE TERMS OF THE CONTRACT BY THE LEAD CONTRACTOR OR ANY OTHER PROVIDER THAT ARE NOT RELATED TO THE POTENTIAL FOR THE PROJECT TO DELIVER THE SUCCESS MEASURES IN THE CONTRACT. THIS PARAGRAPH (c) DOES NOT PROHIBIT AN INVESTOR FROM PERFORMING DUE DILIGENCE ON ITS INVESTMENT OR MANAGING THE INVESTMENT.

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

(e) SPECIFY THAT THE PROVISION OF PROGRAM-ELIGIBLE INTERVENTIONS PROVIDED BY THE LEAD CONTRACTOR MAY NOT EXCEED A PERIOD OF SEVEN YEARS UNLESS ONE OR MORE DEFINED PERFORMANCE TARGETS SPECIFIED IN THE CONTRACT IS MET WITHIN THE FIRST SEVEN YEARS IN WHICH THE INTERVENTIONS ARE PROVIDED, BUT THE EVALUATION OF THE SUCCESS OF THE CONTRACT MAY TAKE INTO ACCOUNT OUTCOMES THAT OCCUR AT ANY TIME AFTER THE PROVISION OF PROGRAM-ELIGIBLE INTERVENTIONS HAS BEEN COMPLETED.

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

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

(h) INCLUDE A CLAUSE THAT SPECIFIES ANY CAUSES FOR AND THE PROCEDURES FOR EARLY TERMINATION OF A CONTRACT, REQUIRES AT LEAST NINETY DAYS NOTICE TO EACH PARTY TO THE CONTRACT AND ANY SERVICE PROVIDER OF A PROPOSED TERMINATION, AND REQUIRES A TRANSITION PLAN THAT MINIMIZES ANY NEGATIVE IMPACT ON THE INDIVIDUALS BEING SERVED BY THE LEAD CONTRACTOR SHOULD EARLY TERMINATION OCCUR.

(4) WITH THE APPROVAL OF THE OFFICE AND THE LEAD CONTRACTOR, ONE OR MORE LOCAL GOVERNMENTS MAY BE ADDITIONAL PARTIES TO A CONTRACT TO BE ENTERED INTO BY THE OFFICE AS AUTHORIZED BY SUBSECTION (3) OF THIS SECTION IF THE CHIEF FINANCIAL OFFICER AND THE GOVERNING BODY OF EACH PARTICIPATING LOCAL

GOVERNMENT REVIEW AND APPROVE THE TERMS OF THE PROPOSED CONTRACT. ANY CONTRACT THAT INCLUDES ONE OR MORE LOCAL GOVERNMENTS AS ADDITIONAL PARTIES SHALL 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.

(5) THE OFFICE SHALL ENACT A SUSTAINABILITY PLAN BASED ON SUCCESSFUL OUTCOMES AND PERFORMANCE FOR THOSE PROGRAM-ELIGIBLE INTERVENTIONS THAT YIELD SAVINGS AS ASSESSED BY AN INDEPENDENT EVALUATOR. IF REQUESTED BY THE OFFICE OR THE STATE AUDITOR, THE INDEPENDENT EVALUATOR SHALL PROVIDE ITS ASSESSMENT AND THE DATA UNDERLYING ITS ASSESSMENT TO THE STATE AUDITOR FOR REVIEW. THE OFFICE SHALL ANNUALLY MAKE PUBLICLY AVAILABLE A SUMMARY THAT IDENTIFIES THE DEFINED PERFORMANCE TARGETS MET AND NOT MET AND AMOUNTS OF SUCCESS PAYMENTS PAID.

(6)(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 PROGRAM-ELIGIBLE INTERVENTIONS PROGRAMS UNDER A CONTRACT ENTERED INTO PURSUANT TO SUBSECTION (2) OF THIS SECTION; AND

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

(b) INTEREST AND INCOME EARNED ON THE DEPOSIT AND INVESTMENT OF MONEY IN THE FUND IS CREDITED TO THE FUND. SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY, THE OFFICE SHALL 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.

(7) FUNDING PROVIDED BY A NONGOVERNMENTAL ENTITY FOR A PROGRAM TO BE IMPLEMENTED UNDER THE TERMS OF A PAY FOR SUCCESS CONTRACT IS NOT A GRANT, AS DEFINED IN SECTION 24-75-1301, EVEN IF

THE FUNDING IS NOT ULTIMATELY REQUIRED TO BE REPAID BECAUSE THE ENTITY RECEIVES CONTRACTUAL CONSIDERATION FROM THE STATE IN EXCHANGE FOR THE FUNDING IN THE FORM OF A PROMISE TO MAKE SUCCESS PAYMENTS IF THE PROGRAM IS SUCCESSFUL.

(8) UNLESS OTHERWISE SPECIFICALLY PROVIDED, NOTHING IN THIS SECTION EXEMPTS 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 FROM THE REQUIREMENTS OF ANY APPLICABLE FEDERAL, STATE, OR LOCAL LAW OR RULE.

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.

Dickey Lee Hullinghorst
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Bill L. Cadman
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO