

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

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
Appropriations

Senate Committees
State, Veterans, & Military Affairs

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.

SENATE
2nd Reading Unamended
May 1, 2015

HOUSE
3rd Reading Unamended
April 20, 2015

HOUSE
Amended 2nd Reading
April 17, 2015

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) "INVESTOR" MEANS A PERSON OR ENTITY THAT IS NOT A LEAD
17 CONTRACTOR OR PROVIDER AND THAT PROVIDES WORKING CAPITAL TO

1 FUND THE PROVISION OF SERVICES UNDER A CONTRACT.

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

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

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

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

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

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

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

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

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

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

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

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

17 **24-37-403. Establishment of state pay for success contracts**
18 **program - pay for success contracts fund - creation.** (1) THERE IS
19 HEREBY ESTABLISHED IN THE OFFICE THE STATE PAY FOR SUCCESS
20 CONTRACTS PROGRAM. THE PURPOSE OF THE STATE PROGRAM IS TO
21 PROVIDE AUTHORIZATION, SUBJECT TO SPECIFIED REQUIREMENTS AND
22 LIMITATIONS, FOR THE OFFICE TO ENTER INTO PAY FOR SUCCESS
23 CONTRACTS WITH ONE OR MORE LEAD CONTRACTORS FOR THE PROVISION
24 OF PROGRAM-ELIGIBLE INTERVENTIONS.

25 (2) BEFORE ENTERING INTO A PAY FOR SUCCESS CONTRACT
26 AUTHORIZED BY THIS SECTION, THE OFFICE, ONE OR MORE LOCAL
27 GOVERNMENTS, OR THE OFFICE AND ONE OR MORE LOCAL GOVERNMENTS

1 SHALL CONDUCT A REQUEST FOR PROPOSAL PROCESS. THE REQUEST FOR
2 PROPOSAL MUST DESCRIBE THE DESIRED POPULATION TO BE SERVED,
3 DESIRED OUTCOMES, AND THE POTENTIAL DURATION OF A PAY FOR
4 SUCCESS PROGRAM AND MAY INCLUDE PERFORMANCE TARGETS. THE
5 OFFICE SHALL MAKE A REQUEST FOR PROPOSAL ISSUED PURSUANT TO THIS
6 SUBSECTION (2) PUBLICLY AVAILABLE ON ITS WEB SITE UPON ITS
7 ISSUANCE.

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

1 (a) CLEARLY DEFINE THE TYPE, SCOPE, AND DURATION OF THE
2 PROGRAM-ELIGIBLE INTERVENTIONS THAT THE LEAD CONTRACTOR WILL
3 DIRECTLY OR INDIRECTLY PROVIDE, WHICH IT MUST PROVIDE BY
4 IMPLEMENTING A NEW PROGRAM OR EXPANDING THE POPULATION SERVED
5 BY AN EXISTING PROGRAM, OR BOTH, AND THE SPECIFIC OUTCOMES
6 SOUGHT BASED ON DEFINED PERFORMANCE TARGETS. THE INTERVENTIONS
7 THAT A LEAD CONTRACTOR DIRECTLY OR INDIRECTLY PROVIDES MUST NOT
8 SUPPLANT ANY EXISTING STATE, LOCAL GOVERNMENT, OR SCHOOL
9 DISTRICT EMPLOYEE WHO IS PROVIDING THE SAME INTERVENTIONS THAT
10 THE LEAD CONTRACTOR WILL DIRECTLY OR INDIRECTLY PROVIDE.

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

13 (c) STATE THAT ONCE THE CONTRACT IS EXECUTED, AN INVESTOR
14 THAT IS FUNDING THE ACTIVITIES OF A LEAD CONTRACTOR UNDER THE
15 TERMS OF THE CONTRACT IS PROHIBITED FROM DICTATING THE MANNER OF
16 DELIVERY OF SERVICES TO BE PROVIDED UNDER THE TERMS OF THE
17 CONTRACT BY THE LEAD CONTRACTOR OR ANY OTHER PROVIDER THAT ARE
18 NOT RELATED TO THE POTENTIAL FOR THE PROJECT TO DELIVER THE
19 SUCCESS MEASURES IN THE CONTRACT. THIS PARAGRAPH (c) DOES NOT
20 PROHIBIT AN INVESTOR FROM PERFORMING DUE DILIGENCE ON ITS
21 INVESTMENT OR MANAGING THE INVESTMENT.

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

25 (e) SPECIFY THAT THE PROVISION OF PROGRAM-ELIGIBLE
26 INTERVENTIONS PROVIDED BY THE LEAD CONTRACTOR MAY NOT EXCEED
27 A PERIOD OF SEVEN YEARS UNLESS ONE OR MORE DEFINED PERFORMANCE

1 TARGETS SPECIFIED IN THE CONTRACT IS MET WITHIN THE FIRST SEVEN
2 YEARS IN WHICH THE INTERVENTIONS ARE PROVIDED, BUT THE
3 EVALUATION OF THE SUCCESS OF THE CONTRACT MAY TAKE INTO
4 ACCOUNT OUTCOMES THAT OCCUR AT ANY TIME AFTER THE PROVISION OF
5 PROGRAM-ELIGIBLE INTERVENTIONS HAS BEEN COMPLETED.

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

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

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

19 (4) WITH THE APPROVAL OF THE OFFICE AND THE LEAD
20 CONTRACTOR, ONE OR MORE LOCAL GOVERNMENTS MAY BE ADDITIONAL
21 PARTIES TO A CONTRACT TO BE ENTERED INTO BY THE OFFICE AS
22 AUTHORIZED BY SUBSECTION (3) OF THIS SECTION IF THE CHIEF FINANCIAL
23 OFFICER AND THE GOVERNING BODY OF EACH PARTICIPATING LOCAL
24 GOVERNMENT REVIEW AND APPROVE THE TERMS OF THE PROPOSED
25 CONTRACT. ANY CONTRACT THAT INCLUDES ONE OR MORE LOCAL
26 GOVERNMENTS AS ADDITIONAL PARTIES SHALL PROVIDE FOR THE
27 ALLOCATION OF PAYMENT RESPONSIBILITIES BETWEEN THE STATE AND

1 EACH LOCAL GOVERNMENT IF THE LEAD CONTRACTOR MEETS THE DEFINED
2 PERFORMANCE TARGETS SPECIFIED IN THE CONTRACT.

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

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

15 (I) MONEYS APPROPRIATED OR TRANSFERRED TO THE FUND BY THE
16 GENERAL ASSEMBLY THAT HAVE BECOME AVAILABLE OR ARE EXPECTED
17 TO BECOME AVAILABLE DUE TO DIRECT OR INDIRECT REDUCTIONS IN STATE
18 SPENDING RESULTING FROM THE PROVISION OF PROGRAM-ELIGIBLE
19 INTERVENTIONS PROGRAMS UNDER A CONTRACT ENTERED INTO PURSUANT
20 TO SUBSECTION (2) OF THIS SECTION; AND

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

23 (b) INTEREST AND INCOME EARNED ON THE DEPOSIT AND
24 INVESTMENT OF MONEY IN THE FUND IS CREDITED TO THE FUND. SUBJECT
25 TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY, THE OFFICE
26 SHALL EXPEND MONEYS IN THE FUND TO MAKE PAYMENTS TO THE LEAD
27 CONTRACTOR AS REQUIRED BY A CONTRACT AND TO PAY ANY

1 ADMINISTRATIVE EXPENSES INCURRED IN CONNECTION WITH A CONTRACT.

2 (7) FUNDING PROVIDED BY A NONGOVERNMENTAL ENTITY FOR A
3 PROGRAM TO BE IMPLEMENTED UNDER THE TERMS OF A PAY FOR SUCCESS
4 CONTRACT IS NOT A GRANT, AS DEFINED IN SECTION 24-75-1301, EVEN IF
5 THE FUNDING IS NOT ULTIMATELY REQUIRED TO BE REPAID BECAUSE THE
6 ENTITY RECEIVES CONTRACTUAL CONSIDERATION FROM THE STATE IN
7 EXCHANGE FOR THE FUNDING IN THE FORM OF A PROMISE TO MAKE
8 SUCCESS PAYMENTS IF THE PROGRAM IS SUCCESSFUL.

9 (8) UNLESS OTHERWISE SPECIFICALLY PROVIDED, NOTHING IN THIS
10 SECTION EXEMPTS THE STATE, A LEAD CONTRACTOR, OR ANY OTHER
11 PERSON INVOLVED IN THE PROVISION OF SERVICES BEING PROVIDED
12 THROUGH A PROGRAM THAT IS IMPLEMENTED THROUGH A PAY FOR
13 SUCCESS CONTRACT FROM THE REQUIREMENTS OF ANY APPLICABLE
14 FEDERAL, STATE, OR LOCAL LAW OR RULE.

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