

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 19-0624.01 Shelby Ross x4510

HOUSE BILL 19-1249

HOUSE SPONSORSHIP

Galindo and Sirota, Buckner, Cutter, Duran, Exum, Gonzales-Gutierrez, Herod, Jaquez Lewis, Kennedy, Michaelson Jenet, Mullica, Valdez A., Weissman

SENATE SPONSORSHIP

Danielson,

House Committees
Education

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE SATISFACTION OF SPECIFIED REQUIREMENTS TO**
102 **ENSURE ACCOUNTABILITY BEFORE A SCHOOL DISTRICT MAY**
103 **ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH A**
104 **THIRD-PARTY CONTRACTOR.**

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://leg.colorado.gov>.)

Beginning October 1, 2019, before entering into a professional services contract with personnel costs of \$200,000 or more, school districts are required to:

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

- ! Conduct a cost-benefit analysis of contracting for the services rather than using district personnel to perform the services, to be completed prior to making a recommendation to contract for services;
- ! Hold at least one public hearing conducted by the school district prior to soliciting bids to provide professional services and before entering into a contract for professional services;
- ! Allow competitive bidding for the contract;
- ! Review of all bids in a regularly scheduled school board meeting, unless a special meeting is authorized; and
- ! Provide an opportunity for affected employees to counter the competitive bid.

The bill defines the types of professional services to which the contract requirements apply and excludes educational services and professional services procured in the normal course of business for school construction. The contract requirements do not apply to a small rural school district, board of cooperative services, time-limited contract that the school district enters into because of an emergency, or the renewal of an existing contract entered into before October 1, 2019.

The bill also requires a contractor for a contract in any dollar amount to provide proof of liability insurance equivalent in amount and scope with that provided by the school district for the contracting activity. Further, a school district shall not enter into a contract for professional services with a contractor that has committed unfair labor practices within the 5 years preceding the date that bids are solicited. In addition, the school district shall not enter into a contract that takes effect prior to the expiration of an existing collective bargaining agreement concerning the employees impacted by the new contract. The contractor may offer available employee positions to the existing employees.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 22-32-122 as
 3 follows:

4 **22-32-122. Contract services, equipment, and supplies -**
 5 **definition.** (1) (a) AS USED IN THIS SECTION, UNLESS THE CONTEXT
 6 OTHERWISE REQUIRES, "PROFESSIONAL SERVICES" INCLUDES
 7 PARAPROFESSIONAL SERVICES, CLERICAL SERVICES, CUSTODIAL AND
 8 MAINTENANCE SERVICES, FOOD SERVICES, TRANSPORTATION SERVICES,

1 TECHNICAL SERVICES, SKILLED TRADE SERVICES, SECURITY SERVICES, AND
2 HEALTH AND STUDENT SERVICES THAT ARE PERFORMED BY A
3 NONLICENSED PERSON, AS DEFINED IN SECTION 22-32-109.8 (8)(a.5).

4 (b) PROFESSIONAL SERVICES DO NOT INCLUDE PROFESSIONAL
5 SERVICES PROCURED BY A SCHOOL DISTRICT IN THE NORMAL COURSE OF
6 BUSINESS FOR NEW SCHOOL CONSTRUCTION OR THE SIGNIFICANT
7 RENOVATION OF AN EXISTING SCHOOL BUILDING.

8 ~~(1)~~ (2) A school district may contract with another district; with
9 the governing body of a state college or university; with the tribal
10 corporation of an Indian tribe or nation; with a federal agency or officer;
11 with a county, city, or city and county; or with a natural person, body
12 corporate, or association for the performance of a service, including an
13 educational service, an activity, or an undertaking that a school may be
14 authorized by law to perform or undertake.

15 ~~(2)~~ (3) Each school district board of education may review and
16 revise the policies and procedures adopted by the board pursuant to
17 section 22-32-109 (1)(b) and may choose to require competitive bidding
18 on contracts for professional services WITH PERSONNEL COSTS UNDER TWO
19 HUNDRED THOUSAND DOLLARS, other than contracts for instructional
20 EDUCATIONAL services. A policy adopted pursuant to this subsection ~~(2)~~
21 SUBSECTION (3) may:

22 (a) Require that ~~the~~ school district personnel, prior to
23 recommending that the board of education enter into a contract pursuant
24 to this section, ~~examine~~ ANALYZE the costs and benefits of contracting for
25 the service, activity, or undertaking rather than performing the service,
26 activity, or undertaking using school district personnel and ~~that~~ INCLUDE
27 WITH the recommendation ~~specify~~ THE COST-BENEFIT ANALYSIS ALONG

1 WITH the conclusions of the cost-benefit analysis and their rationale;

2 (b) Require the school district personnel to implement a bidding

3 process for contracts entered into pursuant to this section; and

4 (c) Establish criteria for recommending a contractor to the board

5 of education.

6 (4) (a) BEGINNING OCTOBER 1, 2019, BEFORE ENTERING INTO A

7 PROFESSIONAL SERVICES CONTRACT WITH PERSONNEL COSTS OF TWO

8 HUNDRED THOUSAND DOLLARS OR MORE, A SCHOOL DISTRICT BOARD OF

9 EDUCATION SHALL:

10 (I) PRIOR TO SOLICITING COMPETITIVE BIDS FOR A PROFESSIONAL

11 SERVICES CONTRACT:

12 (A) REQUIRE THAT SCHOOL DISTRICT PERSONNEL ANALYZE THE

13 COSTS AND BENEFITS OF CONTRACTING FOR THE SERVICE RATHER THAN

14 PERFORMING THE SERVICE USING SCHOOL DISTRICT PERSONNEL AND

15 INCLUDE WITH THE RECOMMENDATION THE COST-BENEFIT ANALYSIS

16 ALONG WITH THE CONCLUSIONS OF THE COST-BENEFIT ANALYSIS AND

17 THEIR RATIONALE; AND

18 (B) CONDUCT A MINIMUM OF ONE PUBLIC HEARING DURING A

19 REGULARLY SCHEDULED MEETING OF THE SCHOOL DISTRICT BOARD OF

20 EDUCATION TO DISCUSS THE PROPOSAL TO CONTRACT WITH A THIRD PARTY

21 FOR PROFESSIONAL SERVICES. THE SCHOOL DISTRICT BOARD OF

22 EDUCATION SHALL PROVIDE NOTICE OF THE DATE, TIME, AND LOCATION OF

23 THE FIRST PUBLIC HEARING PRIOR TO THE INITIAL DATE THAT BIDS ARE

24 SOLICITED OR A MINIMUM OF THIRTY DAYS PRIOR TO ENTERING INTO THE

25 CONTRACT, WHICHEVER PROVIDES A GREATER NOTICE PERIOD.

26 (II) REQUIRE COMPETITIVE BIDDING FOR THE PROFESSIONAL

27 SERVICES CONTRACT; AND

1 (III) REVIEW AND CONSIDER ALL BIDS DURING AN OPEN SESSION OF
2 A REGULARLY SCHEDULED MEETING OF THE SCHOOL DISTRICT BOARD OF
3 EDUCATION, UNLESS THE CLASSIFIED EMPLOYEES WHO PERFORM THE
4 PROFESSIONAL SERVICES, IF APPLICABLE, AGREE IN WRITING THAT THE
5 REVIEW MAY TAKE PLACE IN OPEN SESSION AT A SPECIALLY SCHEDULED
6 MEETING OF THE SCHOOL DISTRICT BOARD OF EDUCATION. THE CLASSIFIED
7 EMPLOYEES WHO PERFORM THE PROFESSIONAL SERVICES MUST BE GIVEN
8 THE OPPORTUNITY TO COUNTER THE COMPETITIVE BID DURING THE OPEN
9 SESSION AFTER REVIEW AND CONSIDERATION OF ALL OTHER BIDS. ANY
10 INFORMATION CONTAINED IN A BID THAT IS PROTECTED FROM DISCLOSURE
11 PURSUANT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE
12 72 OF TITLE 24, MUST NOT BE DISCLOSED DURING THE OPEN SESSION.

13 (b) THE REQUIREMENTS OF SUBSECTION (4)(a) OF THIS SECTION DO
14 NOT APPLY TO:

15 (I) A BOARD OF EDUCATION OF A SMALL RURAL SCHOOL DISTRICT,
16 AS DEFINED IN SECTION 22-5-119 (3)(h);

17 (II) A SCHOOL DISTRICT THAT HAS ENTERED INTO A CONTRACT FOR
18 PROFESSIONAL SERVICES WITH A BOARD OF COOPERATIVE SERVICES,
19 UNLESS THE EMPLOYEES PROVIDING THE PROFESSIONAL SERVICES ARE
20 EMPLOYED BY A PRIVATE VENDOR;

21 (III) A TIME-LIMITED CONTRACT FOR PROFESSIONAL SERVICES
22 THAT THE SCHOOL DISTRICT ENTERS INTO DUE TO AN EMERGENCY OR
23 OTHER SERIOUS UNFORSEEN CIRCUMSTANCE THAT NECESSITATES
24 IMMEDIATE ACTION BY THE SCHOOL DISTRICT DURING THE CURRENT
25 BUDGET YEAR AND THAT IS BEYOND THE CAPACITY OF CURRENT SCHOOL
26 DISTRICT PERSONNEL; OR

27 (IV) THE RENEWAL OF EXISTING CONTRACTS FOR PROFESSIONAL

1 SERVICES THAT WERE ENTERED INTO PRIOR TO OCTOBER 1, 2019.

2 ~~(3)~~ (5) (a) A contract entered into pursuant to this section ~~shall~~
3 MUST set forth fully the purposes, powers, rights, obligations, and
4 responsibilities, financial or otherwise, of the parties so contracting and
5 ~~shall~~ MUST require the service, including educational service, activity, or
6 undertaking, to be of comparable quality and meet the same requirements
7 and standards that would apply if performed by the school district. A
8 CONTRACTOR SHALL PROVIDE PROOF OF LIABILITY INSURANCE THAT IS
9 EQUIVALENT IN SCOPE AND AMOUNT TO THAT PROVIDED BY THE SCHOOL
10 DISTRICT FOR THE CONTRACTED ACTIVITY.

11 (b) A contract executed pursuant to this section may include,
12 among other things, the purchase, outright or by installment sale, or rental
13 or lease, with or without an option to purchase, of necessary building
14 facilities, equipment, supplies, and employee services.

15 (c) Any state or federal financial assistance that would accrue to
16 a contracting school district, if the district were to perform the contracted
17 service, including educational service, activity, or undertaking
18 individually, ~~shall~~ MUST, if the state board of education finds the
19 contracted service, including educational service, activity, or undertaking,
20 is of comparable quality and meets the same requirements and standards
21 that would apply if performed by a school district, be apportioned by the
22 state board of education on the basis of the contractual obligations and
23 paid separately to each contracting school district in the manner
24 prescribed by law.

25 (6) A SCHOOL DISTRICT BOARD OF EDUCATION SHALL NOT ENTER
26 INTO A CONTRACT FOR PROFESSIONAL SERVICES, OTHER THAN
27 EDUCATIONAL SERVICES, WITH A CONTRACTOR THAT HAS COMMITTED

1 UNFAIR LABOR PRACTICES PURSUANT TO THE FEDERAL "NATIONAL LABOR
2 RELATIONS ACT", 29 U.S.C. SEC. 158, WITHIN THE FIVE YEARS PRECEDING
3 THE DATE THAT BIDS ARE SOLICITED OR ENTER INTO A CONTRACT THAT
4 TAKES EFFECT PRIOR TO THE EXPIRATION OF AN EXISTING COLLECTIVE
5 BARGAINING AGREEMENT COVERING THE EMPLOYEES IMPACTED BY THE
6 CONTRACT FOR PROFESSIONAL SERVICES. THE CONTRACT FOR
7 PROFESSIONAL SERVICES MAY REQUIRE THE CONTRACTOR TO OFFER
8 AVAILABLE EMPLOYEE POSITIONS TO QUALIFIED SCHOOL DISTRICT
9 EMPLOYEES WHOSE EMPLOYMENT MAY BE TERMINATED OR WHOSE HOURS
10 MAY BE REDUCED BY FIFTY PERCENT OR MORE BECAUSE OF THE
11 CONTRACT.

12 ~~(4)~~ (7) (a) A contract executed pursuant to this section that
13 includes services performed for a public school ~~shall~~ MUST include a
14 provision requiring a criminal background check for any person providing
15 services under the contract, including any subcontractor or other agent of
16 the contracting entity, if the person provides direct services to students,
17 including but not limited to transportation, instruction, or food services.
18 The criminal background check shall, at a minimum, meet the
19 requirements of ~~section 22-32-109.7~~ SECTIONS 22-32-109.7 AND
20 22-32-109.8 and any other requirements of the school district that
21 executes the contract. The contracting entity is responsible for any costs
22 associated with the background check. A contractor need not provide the
23 results of the background check with the submission of the bid but shall
24 make the background check results available upon request of the school
25 board in compliance with the provisions of section 24-72-305.3. ~~C.R.S.~~

26 (b) ~~The background check described in paragraph (a) of this~~
27 ~~subsection (4) is required only for those persons who have regular, but~~

1 ~~not incidental, contact with students at least once a month.~~

2 (c) The provisions of ~~paragraph (a) of this subsection (4)~~
3 SUBSECTION (7)(a) OF THIS SECTION do not apply to a faculty member
4 from an institution of higher education who contracts to teach for a school
5 district and who has undergone a background check that meets the
6 requirements of section 22-32-109.7 and any other requirements of the
7 school district with which the faculty member contracts.

8 ~~(5)~~ (8) Nothing in this section authorizes a school district to
9 expend proceeds from the sale of general obligation or revenue bonds
10 issued by the school district to procure or erect a school or other building
11 beyond the territorial limits of the district except in accordance with the
12 provisions of section 22-32-109 (1)(v).

13 **SECTION 2. Act subject to petition - effective date -**
14 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
15 the expiration of the ninety-day period after final adjournment of the
16 general assembly (August 2, 2019, if adjournment sine die is on May 3,
17 2019); except that, if a referendum petition is filed pursuant to section 1
18 (3) of article V of the state constitution against this act or an item, section,
19 or part of this act within such period, then the act, item, section, or part
20 will not take effect unless approved by the people at the general election
21 to be held in November 2020 and, in such case, will take effect on the
22 date of the official declaration of the vote thereon by the governor.

23 (2) This act applies to contracts for professional services, other
24 than contracts for educational services, solicited on or after the applicable
25 effective date of this act.