

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 22-0241.02 Jason Gelender x4330

HOUSE BILL 22-1252

HOUSE SPONSORSHIP

Bernett, Bird, Boesenecker, Esgar, Gray, Hooton, Jodeh, Kipp, Lindsay, McCormick, Ricks

SENATE SPONSORSHIP

Kirkmeyer and Jaquez Lewis,

House Committees
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A BILL FOR AN ACT

101 **CONCERNING PROVISIONS OF PUBLIC SCHOOL CONTRACTS, AND, IN**
102 **CONNECTION THEREWITH, SPECIFYING REQUIREMENTS AND**
103 **LIMITATIONS FOR SUCH PROVISIONS.**

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>.)

The bill, which is modeled in part after an existing provision of the "Procurement Code", concerns provisions of a public school contract, which is defined as an agreement between a public school contracting entity and a contractor where the principal purpose is to acquire supplies, services, or construction or to dispose of supplies for the direct benefit of

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.

HOUSE
3rd Reading Unamended
March 16, 2022

HOUSE
Amended 2nd Reading
March 15, 2022

or in support of a public school other than an agreement for the acquisition of certain types of professional services. The bill also specifies that certain specified types of terms or conditions in a public school contract are void and makes a public school contract voidable if it does not include certain specified provisions.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 22-1-134 as
3 follows:

4 **22-1-134. Terms and conditions in public school contracts -**
5 **definitions.** (1) AS USED IN THIS SECTION:

6 (a) "CONSTRUCTION" MEANS THE PROCESS OF BUILDING,
7 ALTERING, REPAIRING, IMPROVING, OR DEMOLISHING ANY PUBLIC
8 STRUCTURE OR BUILDING OR ANY OTHER PUBLIC IMPROVEMENTS OF ANY
9 KIND TO ANY REAL PROPERTY THAT IS OWNED OR LEASED BY A
10 CONTRACTING ENTITY OR BY A PUBLIC SCHOOL AND IS USED FOR THE
11 DIRECT BENEFIT OF OR IN SUPPORT OF A PUBLIC SCHOOL.

12 (b) "CONTRACTOR" MEANS ANY PERSON HAVING A CONTRACT
13 WITH A PUBLIC SCHOOL CONTRACTING ENTITY. "CONTRACTOR" DOES NOT
14 INCLUDE AN EMPLOYEE OF A PUBLIC SCHOOL CONTRACTING ENTITY OR OF
15 A PUBLIC SCHOOL TO BE DIRECTLY BENEFITED BY OR SUPPORTED BY A
16 PUBLIC SCHOOL CONTRACT.

17 (c) "PUBLIC SCHOOL CONTRACT" MEANS ANY TYPE OF AGREEMENT,
18 REGARDLESS OF WHAT IT MAY BE CALLED, ENTERED INTO BETWEEN A
19 PUBLIC SCHOOL CONTRACTING ENTITY AND A CONTRACTOR WHERE THE
20 PRINCIPAL PURPOSE IS TO ACQUIRE SUPPLIES, SERVICES, OR CONSTRUCTION
21 OR TO DISPOSE OF SUPPLIES FOR THE DIRECT BENEFIT OF OR IN SUPPORT OF
22 A PUBLIC SCHOOL; EXCEPT THAT "PUBLIC SCHOOL CONTRACT" DOES NOT
23 INCLUDE AN AGREEMENT FOR THE ACQUISITION OF PROFESSIONAL

1 SERVICES, AS DEFINED IN SECTION 24-30-1402 (6).

2 (d) "PUBLIC SCHOOL CONTRACTING ENTITY" MEANS AN ENTITY
3 THAT IS AUTHORIZED TO CONTRACT FOR THE DIRECT BENEFIT OF OR
4 SUPPORT OF A PUBLIC SCHOOL AND ENTERS INTO A PUBLIC SCHOOL
5 CONTRACT. "PUBLIC SCHOOL CONTRACTING ENTITY" INCLUDES A SCHOOL
6 DISTRICT AND, TO THE EXTENT AUTHORIZED BY LAW, A PUBLIC SCHOOL, AN
7 ADMINISTRATIVE UNIT, AS DEFINED IN SECTION 22-20-103 (1), A
8 PARTICIPATING PROVIDER, AS DEFINED IN SECTION 22-100-101, OR ANY
9 OTHER ENTITY THAT IS AUTHORIZED TO CONTRACT FOR THE DIRECT
10 BENEFIT OF OR SUPPORT OF A PUBLIC SCHOOL.

11 (2) (a) A TERM OR CONDITION IN A PUBLIC SCHOOL CONTRACT IS
12 VOID AB INITIO IF THE TERM OR CONDITION:

13 (I) REQUIRES THE PUBLIC SCHOOL CONTRACTING ENTITY TO
14 INDEMNIFY OR HOLD HARMLESS ANOTHER PERSON;

15 (II) SPECIFIES THAT THE PUBLIC SCHOOL CONTRACTING ENTITY
16 AGREES TO BINDING ARBITRATION OR TO ANY OTHER BINDING
17 EXTRA-JUDICIAL DISPUTE RESOLUTION PROCESS;

18 (III) SPECIFIES THAT THE PUBLIC SCHOOL CONTRACTING ENTITY
19 AGREES TO LIMIT LIABILITY OF ANOTHER PERSON FOR BODILY INJURY,
20 DEATH, OR DAMAGE TO PROPERTY OF THE PUBLIC SCHOOL CONTRACTING
21 ENTITY OR A PUBLIC SCHOOL DIRECTLY BENEFITED BY OR SUPPORTED BY
22 THE PUBLIC SCHOOL CONTRACT THAT IS CAUSED BY THE NEGLIGENCE OR
23 WILLFUL MISCONDUCT OF THE PERSON OR OF THE PERSON'S EMPLOYEES OR
24 AGENTS;

25 (IV) PURPORTS TO WAIVE, ALTER, OR LIMIT THE APPLICATION OF
26 ANY PROVISION OF THE "COLORADO GOVERNMENTAL IMMUNITY ACT",
27 ARTICLE 10 OF TITLE 24;

1 (V) PURPORTS TO WAIVE, ALTER, OR LIMIT THE APPLICATION OF
2 THE "STUDENT DATA TRANSPARENCY AND SECURITY ACT", ARTICLE 16
3 OF THIS TITLE 22, THE PROVISIONS OF SECTIONS 6-1-713 AND 6-1-713.5
4 RELATING TO PROTECTION AND DISPOSAL OF PERSONAL IDENTIFYING
5 INFORMATION, THE PROVISIONS OF ARTICLE 73 OF TITLE 24 RELATING TO
6 SECURITY BREACHES AND PERSONAL INFORMATION, OR, UPON IT TAKING
7 EFFECT ON JULY 1, 2023, THE "COLORADO PRIVACY ACT", PART 13 OF
8 ARTICLE 1 OF TITLE 6; OR

9 (VI) CONFLICTS WITH COLORADO LAW OR RULES PROMULGATED
10 PURSUANT TO COLORADO LAW OR CONFLICTS WITH ANY PROVISION
11 REQUIRED TO BE INCLUDED OR DEEMED TO BE INCLUDED IN A PUBLIC
12 SCHOOL CONTRACT BY SUBSECTION (2)(d) OF THIS SECTION AS OF THE
13 DATE THE CONTRACT IS EXECUTED.

14 (b) IF A PUBLIC SCHOOL CONTRACT CONTAINS A TERM OR
15 CONDITION THAT IS VOID AB INITIO UNDER SUBSECTION (2)(a) OF THIS
16 SECTION, THE PUBLIC SCHOOL CONTRACT IS OTHERWISE ENFORCEABLE AS
17 IF IT DID NOT CONTAIN THE VOID TERM OR CONDITION.

18 (c) ALL PUBLIC SCHOOL CONTRACTS, EXCEPT FOR CONTRACTS
19 WITH ANOTHER GOVERNMENT, ARE GOVERNED BY COLORADO LAW
20 NOTWITHSTANDING ANY CONTRACT TERM OR CONDITION TO THE
21 CONTRARY.

22 (d) A PUBLIC SCHOOL CONTRACT MUST INCLUDE PROVISIONS, AND
23 IF SUCH PROVISIONS ARE NONETHELESS INADVERTENTLY OR OTHERWISE
24 OMITTED, SHALL BE DEEMED TO INCLUDE PROVISIONS, THAT:

25 (I) STATE THAT, SUBJECT TO THE REQUIREMENTS OF SECTION
26 24-91-103.6 PERTAINING TO CONTRACTS FOR THE CONSTRUCTION AND
27 DESIGN OF PUBLIC WORKS PROJECTS, ANY AND ALL CONTRACTUAL

1 FINANCIAL OBLIGATIONS OF THE PUBLIC SCHOOL CONTRACTING ENTITY
2 THAT ARE PAYABLE AFTER THE CURRENT FISCAL YEAR ARE CONTINGENT
3 ON MONEY TO PAY THE OBLIGATIONS BEING APPROPRIATED, BUDGETED,
4 AND OTHERWISE MADE AVAILABLE;

5 (II) REQUIRE THE CONTRACTOR TO COMPLY WITH ALL APPLICABLE
6 FEDERAL, STATE, AND LOCAL LAWS, RULES, AND REGULATIONS IN EFFECT
7 WHEN THE CONTRACT IS EXECUTED OR THEREAFTER ESTABLISHED,
8 INCLUDING, WITHOUT LIMITATION:

9 (A) LAWS, RULES, AND REGULATIONS APPLICABLE TO
10 DISCRIMINATION AND UNFAIR EMPLOYMENT PRACTICES; AND

11 (B) LAWS, RULES, AND REGULATIONS THAT REQUIRE THE
12 PROTECTION OF PERSONAL IDENTIFYING INFORMATION, INCLUDING
13 STUDENT PERSONAL IDENTIFYING INFORMATION, AS DEFINED IN SECTION
14 22-16-103 (13), SUCH AS THE FEDERAL "FAMILY EDUCATION RIGHTS AND
15 PRIVACY ACT", 20 U.S.C. SEC. 1232g, THE "STUDENT DATA
16 TRANSPARENCY AND SECURITY ACT", ARTICLE 16 OF THIS TITLE 22, THE
17 PROVISIONS OF SECTIONS 6-1-713 AND 6-1-713.5 RELATING TO
18 PROTECTION AND DISPOSAL OF PERSONAL IDENTIFYING INFORMATION, THE
19 PROVISIONS OF ARTICLE 73 OF TITLE 24 RELATING TO SECURITY BREACHES
20 AND PERSONAL INFORMATION, OR, UPON IT TAKING EFFECT ON JULY 1,
21 2023, THE "COLORADO PRIVACY ACT", PART 13 OF ARTICLE 1 OF TITLE 6;
22 AND

23 (III) REQUIRE THE CONTRACTOR TO PERFORM ITS DUTIES AS AN
24 INDEPENDENT CONTRACTOR, TO PAY WHEN DUE ALL APPLICABLE
25 EMPLOYMENT TAXES AND INCOME TAXES FOR ITS EMPLOYEES INCURRED
26 IN THE PERFORMANCE OF THE CONTRACT, AND TO PROVIDE AND KEEP IN
27 FORCE WORKERS' COMPENSATION AND UNEMPLOYMENT COMPENSATION

1 INSURANCE IN THE AMOUNTS REQUIRED BY LAW.

2 **SECTION 2. Applicability.** This act applies to contracts
3 executed on or after July 1, 2022.

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