

By: Senator(s) Watson

To: Education;
Appropriations

SENATE BILL NO. 2103

1 AN ACT TO AUTHORIZE THE DEPARTMENT OF FINANCE AND
2 ADMINISTRATION AND PUBLIC SCHOOL DISTRICTS TO IMPLEMENT A "PAY FOR
3 SUCCESS CONTRACTING" PROCESS WHICH LEVERAGES PUBLIC AND PRIVATE
4 FUNDING AND SUPPORTS PROVIDERS WITH A RECORD OF IMPROVED SERVICES,
5 INCREASED STUDENT ACHIEVEMENT AND COST-EFFECTIVENESS; TO PROVIDE
6 DEFINITIONS; TO PROVIDE FOR THE ESTABLISHMENT OF THE "PAY FOR
7 SUCCESS CONTRACTS" PROGRAM; TO PROVIDE PROCEDURES AND CRITERIA FOR
8 ENTERING INTO SUCH CONTRACTS WITH PROVIDERS; TO ESTABLISH THE PAY
9 FOR SUCCESS CONTRACTS FUND; AND FOR RELATED PURPOSES.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

11 **SECTION 1.** (1) This section shall be known and may be cited
12 as the "Pay for Success Contracts Act."

13 (2) **Definitions.** As used in this section, unless the
14 context otherwise requires:

15 (a) "Contract" means a Pay for Success Contract entered
16 into by the Department of Finance and Administration and a lead
17 contractor, or the Department of Finance and Administration and
18 one or more public school districts, and a lead contractor as
19 authorized by subsection (3) of this section.

20 (b) "Fund" means the Pay for Success Contracts Fund
21 created in subsection (3) of this section.



22 (c) "Investor" means a person or entity that is not a
23 lead contractor or provider and that provides working capital to
24 fund the provision of services under a contract.

25 (d) "Lead contractor" means an organization or local
26 government selected by the Director of the Department of Finance
27 and Administration or the local school board to participate in the
28 state program by:

29 (i) Entering into a Pay for Success Contract with
30 the Department of Finance and Administration, or with the
31 Department of Finance and Administration and one or more public
32 school districts, as applicable, to provide program-eligible
33 interventions directly or through subcontracts with other
34 providers;

35 (ii) Overseeing the provision of program-eligible
36 interventions by any other providers with which it subcontracts;
37 and

38 (iii) Using its own money or borrowing money to
39 pay the costs of providing program-eligible interventions
40 throughout the contract as negotiated by the parties and, if the
41 program-eligible interventions that it provides meet the defined
42 performance targets established in a Pay for Success Contract,
43 receiving success payments.

44 (e) "Program-eligible interventions" means services
45 provided in order to improve the lives and living conditions of



46 individuals by increasing economic opportunity and the likelihood
47 of healthy futures and promoting child and youth development.

48 (f) "Provider" means a person or entity that provides
49 program-eligible interventions on a for-profit or nonprofit basis.

50 "Provider" includes:

51 (i) A lead contractor that provides
52 program-eligible interventions directly rather than entering into
53 subcontracts with other providers for the provision of such
54 interventions; and

55 (ii) A local school district, which may be the
56 same local school district that establishes a program-eligible
57 interventions program.

58 (g) "School district" means any public school district
59 organized under state law or charter school created pursuant to
60 Section 37-28-1 et seq., Mississippi Code of 1972.

61 (h) "State program" means the Pay for Success Contracts
62 Program established in this section.

63 (i) "Success payments" means payments made to the lead
64 contractor for meeting defined performance targets specified in a
65 Pay for Success Contract.

66 (3) **Establishment of state Pay for Success Contracts Program**
67 **and creation of the Pay for Success Contracts Fund.**

68 (a) There is hereby established in the Department of
69 Finance and Administration the state Pay for Success Contracts
70 Program. The purpose of the state program is to provide



71 authorization subject to specified requirements and limitations,
72 for the Department of Finance and Administration to enter into Pay
73 for Success Contracts with one or more lead contractors for the
74 provision of program-eligible interventions.

75 (b) Before entering into a Pay for Success Contract
76 authorized by this section: (i) the Department of Finance and
77 Administration; (ii) one or more local school districts; or (iii)
78 the Department of Finance and Administration and one or more local
79 school districts shall conduct a request for proposal process.
80 The request for proposal must describe the desired population to
81 be served, desired outcomes, and the potential duration of a Pay
82 for Success Contracts Program and may include performance targets.
83 The Department of Finance and Administration shall make a request
84 for proposal issued pursuant to this subsection (3) of this
85 section publicly available on its website upon its issuance.

86 (c) (i) The Department of Finance and Administration;
87 (ii) one or more local school districts; or (iii) the Department
88 of Finance and Administration and one or more local school
89 districts as authorized by subsection (4) of this section, may
90 enter into a contract with a lead contractor for the provision of
91 program-eligible interventions. Entry into such a contract is
92 generally subject to the requirements of Section 31-7-13,
93 Mississippi Code of 1972, and the Department of Finance and
94 Administration is encouraged, but not required, to use a
95 competitive sealed proposals process as specified in Section



96 31-7-13, Mississippi Code of 1972, when developing and reviewing
97 the terms of a Pay for Success Contract, the Department of Finance
98 and Administration may consult with the State Treasurer on
99 financial terms and with experts to provide advice regarding
100 definition of appropriate performance targets. A contract shall
101 not require or authorize the state to use federal monies to make
102 success payments unless federal law or federal regulations
103 authorize the use of federal monies for that purpose. Before it
104 enters into a contract, the Department of Finance and
105 Administration shall make the contract available to the public on
106 the Department of Finance and Administration's website and provide
107 an opportunity for public comment regarding the contract. Prior
108 to entering into the terms of a contract, a contract must:

109 1. Clearly define the type, scope, and
110 duration of the program-eligible interventions that the lead
111 contractor will directly or indirectly provide, which it must
112 provide by implementing a new program or expanding the population
113 served by an existing program, or both, and the specific outcomes
114 sought based on defined performance targets. The interventions
115 that a lead contractor directly or indirectly provides must not
116 supplant an existing state, local government, or school district
117 employee who is providing the same interventions that the lead
118 contractor will directly or indirectly provide;

119 2. Detail the roles and responsibilities of
120 each party to the contract and indentified subcontractors;



121 3. State that once the contract is executed,
122 an investor that is funding the activities of a lead contractor
123 under the terms of the contract is prohibited from dictating the
124 manner of delivery of services to be provided under the terms of
125 the contract by the lead contractor or any other provider that are
126 not related to the potential for the project to deliver the
127 success measures in the contract. This item 3 does not prohibit
128 an investor from performing due diligence on its investment or
129 managing the investment;

130 4. Provide for an objective process by which
131 an independent evaluator determines whether the defined
132 performance targets have been achieved;

133 5. Specify that the provision of
134 program-eligible interventions provided by the lead contractor may
135 not exceed a period of seven (7) years unless one or more defined
136 performance targets specified in the contract is met within the
137 first seven (7) years in which the interventions are provided, but
138 the evaluation of the success of the contract may take into
139 account outcomes that occur at any time after the provision of
140 program-eligible interventions has been completed;

141 6. Specify the procedures that the lead
142 contractor must follow to request payments and a repayment
143 schedule;

144 7. State that any request for payment made by
145 the lead contractor is subject to approval by the Department of



146 Finance and Administration and that the obligation of the
147 Department of Finance and Administration to make any payment is
148 subject to annual appropriation by the Legislature; and

149 8. Include a clause that specifies any causes
150 for and the procedures for early termination of a contract,
151 requires at least ninety (90) days' notice to each party to the
152 contract and any service provider of a proposed termination, and
153 requires a transition plan that minimizes any negative impact on
154 the individuals being served by the lead contractor should early
155 termination occur.

156 (4) With the approval of the Department of Finance and
157 Administration and the lead contractor, one or more local school
158 districts may be additional parties to a contract to be entered
159 into by the Department of Finance and Administration authorized by
160 subsection (3) of this section if the local school superintendent
161 and the local school board of each participating school district
162 review and approve the terms of the proposed contract. Any
163 contract that includes one or more local school districts as
164 additional parties shall provide for the allocation of payment
165 responsibilities between the state and each local school district
166 if the lead contractor meets the defined performance targets
167 specified in the contract.

168 (5) The Department of Finance and Administration shall enact
169 a sustainability plan based on successful outcomes and performance
170 for those program-eligible interventions that yield savings as



171 assessed by an independent evaluator. If requested by the
172 Department of Finance and Administration or the State Auditor, the
173 independent evaluator shall provide its assessment and the data
174 underlying its assessment to the State Auditor for review. The
175 Department of Finance and Administration shall annually make
176 publicly available a summary that indentifies the defined
177 performance targets met and not met and amounts of success
178 payments paid.

179 (6) The Pay for Success Contractors Fund is hereby created
180 in the State Treasury. The principal of the fund consists of:

181 (a) Monies appropriated or transferred to the fund by
182 the Legislature that have become available or are expected to
183 become available due to direct or indirect reductions in state
184 spending resulting from the provision of program-eligible
185 interventions programs under a contract entered into pursuant to
186 subsection (3) of this section;

187 (b) Any other money that the Legislature appropriates
188 or transfers to the fund; and

189 (c) Interest and income earned on the deposit and
190 investment of money in the fund is credited to the fund. Subject
191 to annual appropriation by the Legislature, the Department of
192 Finance of Administration shall expend monies in the fund to make
193 payments to the lead contractor as required by a contract and to
194 pay any administrative expenses incurred in connection with a
195 contract.



196 (7) Funding provided by a nongovernmental entity for a
197 program to be implemented under the terms of a Pay for Success
198 Contract is not a grant, even if the funding is not ultimately
199 required to be repaid because the entity receives contractual
200 consideration from the state in exchange for the funding in the
201 form of a promise to make success payments if the program is
202 successful.

203 (8) Unless otherwise specifically provided, nothing in this
204 section exempts the state, a lead contractor, or any other person
205 involved in the provision of services being provided through a
206 program that is implemented through a Pay for Success Contract
207 from the requirements of any applicable federal, state, or local
208 law or regulation.

209 **SECTION 2.** This act shall take effect and be in force from
210 and after July 1, 2019.

