

**Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 24-0698.02 Rebecca Bayetti x4348

HOUSE BILL 24-1159

HOUSE SPONSORSHIP

Wilson,

SENATE SPONSORSHIP

(None),

House Committees
Education

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE EXCLUSION FROM PUBLIC EMPLOYEES' RETIREMENT**
102 **ASSOCIATION MEMBERSHIP OF EMPLOYEES OF PRIVATE**
103 **THIRD-PARTY ENTITIES THAT CONTRACT TO PERFORM SERVICES**
104 **FOR A PUBLIC ENTITY.**

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 imposes a moratorium until June 30, 2025, during which the public employees' retirement association (PERA) is prohibited from including in its membership an employee of a third-party private entity

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

that contracts with a public entity to perform services.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) The Public Employees' Retirement Association (PERA)
5 operates as an alternative to federal social security, providing a retirement
6 system for public employees of the state of Colorado and its political
7 subdivisions;

8 (b) Colorado's public school system is facing critical shortages,
9 many of which are especially pronounced in rural areas of the state, for
10 many staff, including special services staff, core teaching staff, substitute
11 teachers, qualified bus drivers, and others;

12 (c) One strategy some public school districts and public charter
13 schools have used is to hire a headhunting service to locate employees for
14 the district or school, which then employs the person found by the
15 headhunting service;

16 (d) Another strategy used by school districts and charter schools
17 is to contract out services, as expressly allowed by section 22-32-122,
18 Colorado Revised Statutes, such as school transportation, substitute
19 teaching, and some special services, to private entities that hire their own
20 employees and provide and manage the services for the district and whose
21 employees are included in the social security system, as required by
22 federal law;

23 (e) Independent of recent staff shortages, in some cases students
24 are placed in private programs, as permitted and at times required by the
25 federal "Individuals with Disabilities Education Act" (IDEA), 20 U.S.C.

1 sec. 1400 et seq., with some of these programs or schools being out of
2 state and some being in state, run by private entities that hire their own
3 employees who are included in the social security system as required by
4 federal law;

5 (f) Colorado separately approves a number of closely regulated
6 qualified facilities that provide therapeutic services and education to
7 certain public school students, often for IDEA compliance purposes, and
8 these qualified facilities participate in the social security system;

9 (g) In a small number of cases, schools or districts have contracted
10 for provision of all services within a given program or school (such as,
11 though not limited to, required educational services for expelled students)
12 to be provided by an educational management provider that hires most or
13 all employees, who are treated a private employees within the social
14 security system;

15 (h) PERA has proposed changes to its historic approach to
16 defining employees or members subject to mandatory PERA employee
17 and employer contributions, which would potentially sweep all employees
18 in the categories described in subsections (1)(c) through (1)(g) of this
19 section into the PERA system;

20 (i) Because this change would drastically alter the economic
21 foundations of many of these practices, and create in some instances
22 potentially conflicting duties to the social security system, it is highly
23 likely to result in various contractors and program operators leaving the
24 Colorado market for such services, resulting in certain school systems
25 being unable to provide any services at all to some students, and may
26 result in multiple violations of federal law;

27 (j) The proposed change would likely exacerbate the existing

1 shortage of seats within the eligible facility sector and be directly contrary
2 to the concern of the general assembly, expressed in section 22-2-407.5,
3 Colorado Revised Statutes, regarding the sustainability of the already
4 shrinking number of eligible facilities;

5 (k) The apparent intent of the PERA change is to collect more
6 funds to support the PERA retirement system and to restrict use of any
7 strategies that may be used by public school systems to evade the high
8 cost of PERA contributions, but this intent does not take into account the
9 limited means available for addressing staffing shortages;

10 (l) It is unclear if the proposed PERA change is consistent with
11 the existing definition of member in the law authorizing PERA; and

12 (m) By causing the loss of services, it is highly likely that the
13 proposed PERA change would result in a significant loss of employment
14 within the entire public school sector; a loss of instruction for students,
15 which would also result in losses in enrollments, resulting losses within
16 the PERA system itself; a loss of non-instructional services to parents,
17 such as school transportation; and increasing liability costs for the school
18 system and, potentially, for PERA itself.

19 **SECTION 2.** In Colorado Revised Statutes, **add** 24-51-322 as
20 follows:

21 **24-51-322. Moratorium on membership eligibility for**
22 **employees of third-party private entities - repeal.** (1) (a) THROUGH
23 JUNE 30, 2025, THE ASSOCIATION SHALL NOT EXPAND OR OTHERWISE
24 INTERPRET ELIGIBILITY FOR MEMBERSHIP IN THE ASSOCIATION TO INCLUDE
25 EMPLOYEES OF THIRD-PARTY PRIVATE ENTITIES THAT CONTRACT WITH
26 PUBLIC ENTITIES TO PERFORM SERVICES AS OTHERWISE AUTHORIZED BY
27 LAW.

1 (b) AS USED IN THIS SUBSECTION (1), UNLESS THE CONTEXT
2 OTHERWISE REQUIRES:

3 (I) "EMPLOYEE OF A THIRD-PARTY PRIVATE ENTITY" MEANS AN
4 INDIVIDUAL WHO IS HIRED, FIRED, COMPENSATED, OR ASSIGNED TO
5 PERFORM SERVICES BY THE THIRD-PARTY PRIVATE ENTITY.

6 (II) "THIRD-PARTY PRIVATE ENTITY" MEANS A PRIVATE ENTITY
7 THAT IS NOT AN "EMPLOYER", AS DEFINED IN SECTION 24-51-101 (20), AND
8 THAT IS FULLY SEPARATE FROM A CONTRACTING PUBLIC ENTITY.

9 (2) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2025.

10 **SECTION 3. Safety clause.** The general assembly finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, or safety or for appropriations for
13 the support and maintenance of the departments of the state and state
14 institutions.