

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REVISED

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

LLS NO. 10-0612.01 Nicole Myers

SENATE BILL 10-032

SENATE SPONSORSHIP

Tapia,

HOUSE SPONSORSHIP

Lambert,

Senate Committees
State, Veterans & Military Affairs

House Committees
State, Veterans, & Military Affairs

A BILL FOR AN ACT

101 CONCERNING THE AUTHORIZATION OF AMENDMENTS TO EXISTING
102 STATE INFORMATION TECHNOLOGY CONTRACTS FOR PURPOSES
103 OF FURTHERING CONSOLIDATION OF THE MANAGEMENT OF
104 STATE AGENCY INFORMATION TECHNOLOGY RESOURCES IN THE
105 OFFICE OF INFORMATION TECHNOLOGY.

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>.)

Current law requires the consolidation of information technology

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.

HOUSE
2nd Reading Unam ended
March 17, 2010

SENATE
3rd Reading Unam ended
February 16, 2010

SENATE
Am ended 2nd Reading
February 15, 2010

resources under the office of information technology (office), but it does not permit the consolidation of such resources in existing contracts for information technology resources (contracts). **Section 1** of the bill is a nonstatutory legislative declaration. **Section 2** of the bill grants the office the authority, subject to certain conditions, to negotiate amendments to existing contracts through June 30, 2012. Contract amendments may include, but need not be limited to:

- ! Expansion of the scope of a contract to include additional state agencies;
- ! Extension of the term of a contract; and
- ! Improvements to cyber security.

The bill allows the office to review existing contracts to determine whether the state can improve the cost-effectiveness of its technology investments and ensure that the business needs of the state are met by amending such contracts. The bill establishes certain requirements for the negotiation of an amendment and permits the office to create processes and procedures for such negotiation.

Section 3 of the bill exempts amendments to existing contracts from the requirements of the "Procurement Code".

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

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

4 (a) As stated in section 24-37.5-101 (1), Colorado Revised
5 Statutes, the general assembly has found that "[a]gencies independently
6 acquire uncoordinated and duplicative information resource technologies
7 that are more appropriately acquired as part of a coordinated effort for
8 maximum cost effectiveness and use" and that "[t]he sharing of
9 communication and information resource technologies among agencies
10 is often the most cost-effective method of providing the highest quality
11 and most timely governmental services that would otherwise be cost
12 prohibitive";

13 (b) In 2008, in an effort to address these findings, the general
14 assembly adopted Senate Bill 08-155, which was intended to centralize

1 the management, budgeting, and procurement of state agency information
2 technology resources in the office of information technology;

3 (c) The general assembly recognizes the benefits of information
4 technology consolidation in increasing effectiveness, minimizing costs,
5 and leveraging existing technological investments by the state to a
6 broader degree than allowed without consolidation;

7 (d) The state must act quickly and efficiently to realize the
8 benefits of consolidation in the current economic environment;

9 (e) Through the enactment of Senate Bill 08-155, the office of
10 information technology has been directed to determine and implement
11 statewide efforts to standardize information technology resources, and the
12 office is currently consolidating human resources, financial resources, and
13 decision-making processes in achieving this goal;

14 (f) Although Senate Bill 08-155 addressed the consolidation of
15 people, procurement, processes, and technologies under the management
16 of the office of information technology, the bill failed to address the
17 consolidation of existing contracts by which agencies currently obtain
18 information technology services;

19 (g) To the extent that the authority to consolidate technology
20 resources in existing contracts was not explicitly included in the directive
21 of Senate Bill 08-155 and is needed to completely effectuate that
22 provision of law, such omission should now be remedied in a manner that
23 promotes the best interests of the state;

24 (h) It is therefore the intent of the general assembly to provide a
25 means by which certain existing information technology contracts may be
26 consolidated under the office of information technology in order to fully
27 realize the benefits of centralization and standardization intended by the

1 adoption of Senate Bill 08-155.

2 **SECTION 2.** 24-37.5-105, Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW SUBSECTION to read:

4 **24-37.5-105. Office - responsibilities - rules - repeal.**

5 (10) (a) FOR PURPOSES OF CARRYING OUT THE PROVISIONS OF SUBSECTION
6 (9) OF THIS SECTION, THE OFFICE MAY, BEGINNING ON THE EFFECTIVE DATE
7 OF THIS SUBSECTION (10) THROUGH JUNE 30, 2012, NEGOTIATE
8 AMENDMENTS TO EXISTING CONTRACTS ENTERED INTO BY ANY STATE
9 AGENCY FOR INFORMATION TECHNOLOGY RESOURCES. CONTRACT
10 AMENDMENTS MAY INCLUDE, BUT NEED NOT BE LIMITED TO, EXPANDING
11 THE SCOPE OF THE CONTRACT TO INCLUDE ADDITIONAL STATE AGENCIES,
12 EXTENDING THE TERM OF THE CONTRACT, AND IMPROVING CYBER
13 SECURITY. ANY AMENDMENT NEGOTIATED PURSUANT TO THIS SECTION
14 SHALL NOT BE CONSIDERED A SOLICITATION OR AWARD OF A CONTRACT.

15 (b) AN EXISTING CONTRACT ENTERED INTO BY ANY STATE AGENCY
16 FOR INFORMATION TECHNOLOGY RESOURCES MAY BE AMENDED PURSUANT
17 TO THIS SUBSECTION (10) ONLY IF:

18 (I) ALL CONTRACTORS WHO ARE PARTIES TO THE EXISTING
19 CONTRACT AGREE TO THE AMENDMENT;

20 (II) THE EXISTING CONTRACT WAS AWARDED IN COMPLIANCE WITH
21 THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF THIS TITLE;

22 (III) THE EXISTING CONTRACT WAS NOT INITIALLY AWARDED
23 THROUGH A SOLE SOURCE OR EMERGENCY PROCUREMENT;

24 (IV) THE AMENDMENT TO THE EXISTING CONTRACT DOES NOT
25 JEOPARDIZE THE AVAILABILITY OF FEDERAL FUNDING OR ANY OTHER
26 SOURCE OF FUNDING USED TO MEET STATE OBLIGATIONS UNDER THE
27 EXISTING CONTRACT;

1 (V) THE AMENDMENT TO THE EXISTING CONTRACT ESTABLISHES
2 A STANDARD FOR THE SPECIFIC INFORMATION TECHNOLOGY RESOURCES
3 FOR STATE AGENCIES; AND

4 (VI) THE AMENDMENT COMPLIES WITH ALL OTHER REQUIREMENTS
5 OF THIS SUBSECTION (10).

6 (c) THE OFFICE MAY REVIEW EXISTING INFORMATION TECHNOLOGY
7 RESOURCES CONTRACTS ENTERED INTO BY ANY STATE AGENCY TO
8 DETERMINE WHETHER THE STATE CAN IMPROVE THE COST-EFFECTIVENESS
9 OF ITS TECHNOLOGY INVESTMENT AND MEET THE BUSINESS NEEDS OF THE
10 STATE BY AMENDING THE EXISTING CONTRACTS IN ACCORDANCE WITH
11 THIS SUBSECTION (10). IN DETERMINING WHETHER A CONTRACT SHOULD
12 BE AMENDED, THE OFFICE MAY CONSIDER TECHNICAL FEASIBILITY,
13 TECHNICAL ENHANCEMENT, STATE-OF-THE-ART TECHNOLOGY IN THE
14 APPLICABLE INDUSTRY, FISCAL ADVANTAGES, SYNERGISTIC ADVANTAGES
15 FROM MULTI-AGENCY USE, FUNDING SOURCES, AND THE BUSINESS NEEDS
16 OF AND IMPACTS TO THE CONTRACTING AGENCY UNDER THE EXISTING
17 CONTRACT.

18 (d) IF THE OFFICE MAKES A PRELIMINARY DETERMINATION THAT
19 THE STATE MIGHT BENEFIT FROM AN AMENDMENT TO THE EXISTING
20 CONTRACT FOR INFORMATION TECHNOLOGY RESOURCES, THE OFFICE
21 SHALL PUBLISH ON ITS WEB SITE AND ON THE DEPARTMENT OF
22 PERSONNEL'S PUBLIC ON-LINE SOLICITATION SITE PUBLIC NOTICE OF ITS
23 INTENT TO NEGOTIATE AN AMENDMENT.

24 (e) THE OFFICE SHALL CONFER WITH ANY PROVIDER THAT NOTIFIES
25 THE OFFICE OF ITS INTEREST IN THE EXISTING CONTRACT FOR INFORMATION
26 TECHNOLOGY RESOURCES AND REASONABLY ASSERTS THAT IT IS ABLE TO
27 PROVIDE THE GOODS AND SERVICES PROVIDED UNDER THE CONTRACT IN

1 A MANNER MORE FAVORABLE TO THE STATE. NOTHING IN THIS
2 PARAGRAPH (e) SHALL BE CONSTRUED TO ALLOW THE OFFICE OR ANY
3 STATE AGENCY TO MAKE UNILATERAL CHANGES TO AN EXISTING
4 CONTRACT OR TO CANCEL A CONTRACT UNLESS THE CHANGE OR
5 CANCELLATION IS IN ACCORDANCE WITH THE TERMS OF THE EXISTING
6 CONTRACT.

7 (f) THE OFFICE SHALL CONSULT AND NEGOTIATE WITH EACH
8 CONTRACTOR WHO IS A PARTY TO THE EXISTING CONTRACT TO OBTAIN
9 TERMS AND CONDITIONS MORE FAVORABLE TO THE STATE. DURING ANY
10 SUCH NEGOTIATIONS, THE OFFICE SHALL CONTINUE TO CONSULT WITH
11 AGENCIES THAT ARE PARTIES TO THE EXISTING CONTRACT OR THAT MAY
12 BENEFIT FROM BECOMING PARTIES TO THE CONTRACT. THE OFFICE SHALL
13 ALSO NOTIFY AND CONSULT WITH ANY AGENCY THAT IS RESPONSIBLE FOR
14 ENSURING THAT ANY SPECIFIC INFORMATION TECHNOLOGY RESOURCE
15 COMPLIES WITH ANY LAW OR RULE THAT IMPOSES REQUIREMENTS OTHER
16 THAN THOSE RELATED TO TECHNOLOGY.

17 (g) THE OFFICE, ANY AGENCY THAT IS A PARTY TO THE EXISTING
18 CONTRACT FOR INFORMATION TECHNOLOGY RESOURCES, AND ANY
19 AFFECTED AGENCY MAY NEGOTIATE THE TERMS AND CONDITIONS OF THE
20 AMENDED CONTRACT WITH THE CONTRACTOR, AND THE OFFICE SHALL
21 ENTER INTO THE AMENDED CONTRACT ON BEHALF OF ALL AFFECTED STATE
22 AGENCIES.

23 (h) NO EXISTING CONTRACT FOR INFORMATION TECHNOLOGY
24 RESOURCES SHALL BE AMENDED WITHOUT THE APPROVAL OF EACH
25 AGENCY OF STATE GOVERNMENT THAT IS A PARTY TO THE CONTRACT. IF
26 AN AGENCY DOES NOT APPROVE, IT SHALL PROVIDE THE OFFICE WITH A
27 WRITTEN STATEMENT OF ITS OBJECTIONS AND THE REASONS THEREFOR. IN

1 THE EVENT OF A DISPUTE BETWEEN THE OFFICE AND AN AGENCY THAT
2 DOES NOT APPROVE OF THE AMENDMENT, THE GOVERNOR, OR HIS OR HER
3 DESIGNEE, SHALL MAKE THE FINAL DECISION BY CONCURRING IN OR
4 OVERRIDING THE AGENCY'S DISAPPROVAL.

5 (i) NO SOONER THAN THIRTY CALENDAR DAYS AFTER PROVIDING
6 NOTICE AS REQUIRED BY PARAGRAPH (d) OF THIS SUBSECTION (10), THE
7 OFFICE MAY MAKE A FINAL DETERMINATION TO AMEND THE EXISTING
8 CONTRACT FOR INFORMATION TECHNOLOGY RESOURCES.

9 (j) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A
10 CONTRACT AMENDMENT PURSUANT TO THIS SUBSECTION (10) SHALL NOT
11 BE SUBJECT TO THE PROVISIONS OF THE "PROCUREMENT CODE", ARTICLES
12 101 TO 112 OF THIS TITLE; EXCEPT THAT A CONTRACT AMENDMENT
13 PURSUANT TO THIS SUBSECTION (10) SHALL BE SUBJECT TO THE
14 PROVISIONS OF ARTICLE 109 OF THIS TITLE.

15 (k) NOTHING CONTAINED IN THIS SUBSECTION (10) SHALL BE
16 CONSTRUED TO AUTHORIZE THE OFFICE TO ENTER INTO A NEW CONTRACT
17 WITH A NEW PROVIDER WITHOUT COMPLYING WITH THE APPLICABLE
18 PROVISIONS OF THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF THIS
19 TITLE.

20 (l) THE OFFICE SHALL CREATE A PROCESS AND PROCEDURES TO
21 IMPLEMENT THIS SUBSECTION (10) IN A TRANSPARENT AND OPEN MANNER,
22 INCLUDING PROCEDURES FOR NOTIFYING INTERESTED PARTIES AND
23 ALLOWING OPPORTUNITIES FOR PARTIES TO SUBMIT COMMENTS OR
24 OBJECTIONS.

25 (m) THIS SUBSECTION (10) IS REPEALED, EFFECTIVE JULY 1, 2012.

26 **SECTION 3.** 24-101-105 (1) (a), Colorado Revised Statutes, is
27 amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

1 **24-101-105. Application of this code - repeal.** (1) (a) This code
2 shall apply to all publicly funded contracts entered into by all
3 governmental bodies of the executive branch of this state; except that this
4 code shall not apply to:

5 (VII) (A) BEGINNING ON THE EFFECTIVE DATE OF THIS
6 SUBPARAGRAPH (VII) THROUGH JUNE 30, 2012, THE AMENDMENT OF
7 CONTRACTS MADE AT THE DIRECTION OF THE OFFICE OF INFORMATION
8 TECHNOLOGY IN ACCORDANCE WITH SECTION 24-37.5-105 (10).

9 (B) THIS SUBPARAGRAPH (VII) IS REPEALED, EFFECTIVE JULY 1
10 2012.

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