

## CHAPTER 374

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**EDUCATION - UNIVERSITIES AND COLLEGES**


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**SENATE BILL 09-290**

BY SENATOR(S) Bacon, Kopp, Schwartz, Boyd, Gibbs, Heath, Penry, Hodge, Shaffer B., Tapia;  
also REPRESENTATIVE(S) Riesberg, McFadyen, Sonnenberg, Gardner B., Gerou, Marostica, Summers, Vigil.

**AN ACT****CONCERNING FLEXIBILITY FOR CAPITAL CONSTRUCTION PROJECTS.**

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

**SECTION 1.** 23-1-106 (1), (3), (6), (7), (8), and (11), Colorado Revised Statutes, are amended, and the said 23-1-106 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

**23-1-106. Duties and powers of the commission with respect to capital construction and long-range planning.** (1) EXCEPT AS PERMITTED BY SUBSECTIONS (9) AND (10) OF THIS SECTION, it is declared to be the policy of the general assembly not to authorize or to acquire sites or initiate any program or activity requiring capital construction for state-supported institutions of higher education unless approved by the commission.

(3) The commission shall review and approve FACILITY master ~~planning and program planning~~ PLANS for all ~~capital construction projects of~~ STATE institutions of higher education on ~~state-owned or state-controlled land, regardless of the source of funds,~~ LAND OWNED OR CONTROLLED BY THE STATE OR AN INSTITUTION and CAPITAL CONSTRUCTION PROGRAM PLANS FOR PROJECTS OTHER THAN THOSE PROJECTS CONSTRUCTED PURSUANT TO SUBSECTION (9) OR (10) OF THIS SECTION. EXCEPT FOR THOSE PROJECTS CONSTRUCTED PURSUANT TO SUBSECTION (9) OR (10) OF THIS SECTION, no capital construction shall commence except in accordance with an approved FACILITY master plan AND program plan. ~~and physical plan.~~

(6) (a) The commission shall request annually from each governing board OF EACH STATE INSTITUTION OF HIGHER EDUCATION a five-year projection of capital development projects ~~Such~~ TO BE CONSTRUCTED BUT NOT INCLUDING THOSE PROJECTS CONSTRUCTED PURSUANT TO SUBSECTION (9) OR (10) OF THIS SECTION.

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

THE projection shall include the estimated cost, the method of funding, a schedule for project completion, and the governing board-approved priority for each project. The commission shall determine whether a proposed project is consistent with THE role and mission and master planning of the institution and conforms to standards recommended by the commission.

(b) THE COMMISSION SHALL REQUEST ANNUALLY FROM THE GOVERNING BOARD OF EACH STATE INSTITUTION OF HIGHER EDUCATION A TWO-YEAR PROJECTION OF CAPITAL CONSTRUCTION PROJECTS TO BE CONSTRUCTED PURSUANT TO SUBSECTION (9) OR (10) OF THIS SECTION AND ESTIMATED TO REQUIRE TOTAL PROJECT EXPENDITURES EXCEEDING TWO MILLION DOLLARS. THE PROJECTION SHALL INCLUDE THE ESTIMATED COST, THE METHOD OF FUNDING, AND A SCHEDULE FOR PROJECT COMPLETION FOR EACH PROJECT. AN INSTITUTION SHALL AMEND THE PROJECTION PRIOR TO COMMENCING A PROJECT THAT IS NOT INCLUDED IN THE INSTITUTION'S MOST RECENT PROJECTION.

(7) (a) The commission annually shall ~~establish~~ PREPARE a unified, five-year capital improvements ~~program~~ REPORT OF PROJECTS TO BE CONSTRUCTED, BUT NOT INCLUDING THOSE PROJECTS CONSTRUCTED PURSUANT TO SUBSECTION (9) OR (10) OF THIS SECTION, coordinated with education plans. ~~and~~ THE COMMISSION shall transmit THE REPORT to the office of state planning and budgeting, the governor, and the general assembly, consistent with the executive budget timetable, TOGETHER WITH a recommended priority of funding of capital construction projects for the system of public higher education. The commission shall annually transmit the recommended priority of funding of capital construction projects to the capital development committee no later than November 1 of each year.

(b) Except as provided in subsection (5) of this section, it is the policy of the general assembly to appropriate funds only for projects approved by the commission.

(c) (I) THE COMMISSION ANNUALLY SHALL PREPARE A UNIFIED, TWO-YEAR CAPITAL IMPROVEMENTS REPORT FOR PROJECTS TO BE CONSTRUCTED PURSUANT TO SUBSECTION (9) OR (10) OF THIS SECTION AND ESTIMATED TO REQUIRE TOTAL PROJECT EXPENDITURES EXCEEDING TWO MILLION DOLLARS, COORDINATED WITH EDUCATION PLANS. THE COMMISSION SHALL TRANSMIT THE REPORT TO THE OFFICE OF STATE PLANNING AND BUDGETING, THE GOVERNOR, AND THE GENERAL ASSEMBLY, CONSISTENT WITH THE EXECUTIVE BUDGET TIMETABLE.

(II) (A) COMMENCING IN THE 2010 REGULAR LEGISLATIVE SESSION, AND IN EACH REGULAR LEGISLATIVE SESSION THEREAFTER, THE COMMISSION SHALL SUBMIT THE TWO-YEAR PROJECTIONS PREPARED BY EACH STATE INSTITUTION OF HIGHER EDUCATION FOR THE 2010-11 AND 2011-12 FISCAL YEARS, AND FOR EACH TWO-YEAR PERIOD THEREAFTER AS APPLICABLE, TO THE OFFICE OF STATE PLANNING AND BUDGETING AND THE CAPITAL DEVELOPMENT COMMITTEE. BEGINNING IN THE 2010 REGULAR LEGISLATIVE SESSION AND IN EACH REGULAR LEGISLATIVE SESSION THEREAFTER, THE CAPITAL DEVELOPMENT COMMITTEE SHALL CONDUCT A HEARING ON THE PROJECTIONS AND EITHER APPROVE THE PROJECTIONS OR RETURN THE PROJECTIONS TO THE INSTITUTION FOR MODIFICATION. THE COMMISSION AND THE OFFICE OF STATE PLANNING AND BUDGETING SHALL PROVIDE THE CAPITAL DEVELOPMENT COMMITTEE WITH COMMENTS CONCERNING EACH PROJECTION.

(B) A STATE INSTITUTION OF HIGHER EDUCATION MAY SUBMIT TO THE STAFF OF THE CAPITAL DEVELOPMENT COMMITTEE, THE COMMISSION, AND THE OFFICE OF STATE PLANNING AND BUDGETING AN AMENDMENT TO ITS APPROVED TWO-YEAR PROJECTION. THE CAPITAL DEVELOPMENT COMMITTEE SHALL CONDUCT A HEARING ON THE AMENDMENT WITHIN THIRTY DAYS AFTER SUBMISSION DURING A REGULAR LEGISLATIVE SESSION OF THE GENERAL ASSEMBLY OR WITHIN FORTY-FIVE DAYS AFTER SUBMISSION DURING ANY PERIOD THAT THE GENERAL ASSEMBLY IS NOT IN REGULAR LEGISLATIVE SESSION. THE CAPITAL DEVELOPMENT COMMITTEE SHALL EITHER APPROVE THE PROJECTIONS OR RETURN THE PROJECTIONS TO THE INSTITUTION FOR MODIFICATION. THE COMMISSION AND THE OFFICE OF STATE PLANNING AND BUDGETING SHALL PROVIDE THE CAPITAL DEVELOPMENT COMMITTEE WITH COMMENTS CONCERNING EACH AMENDMENT.

(8) Any acquisition ~~or utilization~~ of real property by a state-supported institution of higher education that is conditional upon or requires expenditures of state-controlled funds or federal funds shall be subject to the approval of the commission, whether acquisition is by lease-purchase, purchase, gift, or otherwise.

(10.5) (a) FOR ANY PROJECT COMMENCED PURSUANT TO SUBSECTION (9) OR (10) OF THIS SECTION, IF, AFTER COMMENCEMENT OF CONSTRUCTION, THE GOVERNING BOARD OF THE INSTITUTION RECEIVES AN ADDITIONAL GIFT, GRANT, OR DONATION FOR THE PROJECT, THE GOVERNING BOARD MAY AMEND THE PROJECT WITHOUT THE APPROVAL OF THE COMMISSION, THE OFFICE OF STATE PLANNING AND BUDGETING, THE CAPITAL DEVELOPMENT COMMITTEE, OR THE JOINT BUDGET COMMITTEE SO LONG AS THE GOVERNING BOARD NOTIFIES THE COMMISSION, THE OFFICE OF STATE PLANNING AND BUDGETING, THE CAPITAL DEVELOPMENT COMMITTEE, AND THE JOINT BUDGET COMMITTEE IN WRITING, EXPLAINING HOW THE PROJECT HAS BEEN AMENDED AND VERIFYING THE RECEIPT OF THE ADDITIONAL GIFT, GRANT, OR DONATION.

(b) FOR ANY PROJECT COMMENCED PURSUANT TO SUBSECTION (9) OR (10) OF THIS SECTION, THE GOVERNING BOARD MAY ENHANCE THE PROJECT IN AN AMOUNT NOT TO EXCEED FIFTEEN PERCENT OF THE ORIGINAL ESTIMATE OF THE COST OF THE PROJECT WITHOUT THE APPROVAL OF THE COMMISSION, THE OFFICE OF STATE PLANNING AND BUDGETING, THE CAPITAL DEVELOPMENT COMMITTEE, OR THE JOINT BUDGET COMMITTEE SO LONG AS THE GOVERNING BOARD NOTIFIES THE COMMISSION, THE OFFICE OF STATE PLANNING AND BUDGETING, THE CAPITAL DEVELOPMENT COMMITTEE, AND THE JOINT BUDGET COMMITTEE IN WRITING, EXPLAINING HOW THE PROJECT HAS BEEN ENHANCED AND THE SOURCE OF THE MONEYS FOR THE ENHANCEMENT.

(11) (a) Each STATE institution OF HIGHER EDUCATION shall submit to the commission on or before September 1 of each year a list and description of each project for which an expenditure was made during the immediately preceding fiscal year that:

(I) Was not subject to review by the commission pursuant to ~~subsections (9) and (10)~~ SUBSECTION (9) of this section;

(II) WAS APPROVED PURSUANT TO SUBSECTION (10) OF THIS SECTION;

(III) WAS ESTIMATED TO REQUIRE TOTAL EXPENDITURES OF TWO MILLION

DOLLARS OR LESS; OR

(IV) WAS AMENDED OR ENHANCED AFTER COMMENCEMENT OF CONSTRUCTION PURSUANT TO SUBSECTION (10.5) OF THIS SECTION.

(b) The commission shall submit a compilation of ~~such~~ THE projects to the capital development committee on or before December 1 of each year.

(13) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY LOCAL JUNIOR COLLEGE DISTRICT THAT IS NOT A PART OF THE STATE SYSTEM AND NOT ELIGIBLE TO RECEIVE ANY STATE FUNDS FOR CAPITAL CONSTRUCTION PURSUANT TO SECTION 23-71-202 (3).

**SECTION 2.** 23-1-106 (9) and (10) (a), Colorado Revised Statutes, are amended to read:

**23-1-106. Duties and powers of the commission with respect to capital construction and long-range planning.** (9) (a) ~~The commission shall review and approve any plan for a capital construction project that is estimated to require total expenditures exceeding two million dollars and~~ EXCEPT AS PROVIDED IN PARAGRAPH (d) OF THIS SUBSECTION (9), A CAPITAL CONSTRUCTION PROJECT INITIATED BY THE GOVERNING BOARD OF A STATE-SUPPORTED INSTITUTION OF HIGHER EDUCATION THAT IS CONTAINED IN THE MOST RECENT UNIFIED, TWO-YEAR CAPITAL IMPROVEMENTS PROJECT PROJECTION APPROVED PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (c) OF SUBSECTION (7) OF THIS SECTION, AS THE PROJECTION MAY BE AMENDED FROM TIME TO TIME, AND THAT IS TO BE CONSTRUCTED, OPERATED, AND MAINTAINED SOLELY FROM ~~student fees, auxiliary facility funds, wholly endowed gifts and bequests, research building revolving funds, or a combination of such sources, as provided in sections 23-5-102, 23-5-103, 23-5-112, 23-20-124, 23-31-129, and 23-41-117 and section 24-75-303 (3), C.R.S.~~ Any such plan for a capital construction project that is estimated to require total expenditures of two million dollars or less CASH FUNDS HELD BY THE INSTITUTION shall not be subject to ADDITIONAL review or approval by the commission, THE OFFICE OF STATE PLANNING AND BUDGETING, THE CAPITAL DEVELOPMENT COMMITTEE, OR THE JOINT BUDGET COMMITTEE.

(b) ~~Upon approval of a plan for a capital construction project pursuant to paragraph (a) of this subsection (9), the commission shall submit such plan to the capital development committee. The capital development committee shall make a recommendation regarding the project to the joint budget committee. Following receipt of the recommendation, the joint budget committee shall refer its recommendations regarding the project, with written comments, to the commission.~~ EXCEPT AS PROVIDED IN PARAGRAPH (d) OF THIS SUBSECTION (9), A CAPITAL CONSTRUCTION PROJECT FOR AN ACADEMIC BUILDING INITIATED BY THE GOVERNING BOARD OF A STATE-SUPPORTED INSTITUTION OF HIGHER EDUCATION THAT IS CONTAINED IN THE MOST RECENT UNIFIED, TWO-YEAR CAPITAL IMPROVEMENTS PROJECT PROJECTION APPROVED PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (c) OF SUBSECTION (7) OF THIS SECTION, AS THE PROJECTION MAY BE AMENDED FROM TIME TO TIME, AND THAT IS TO BE CONSTRUCTED SOLELY FROM CASH FUNDS HELD BY THE INSTITUTION AND OPERATED AND MAINTAINED FROM SUCH FUNDS OR FROM STATE MONEYS APPROPRIATED FOR SUCH PURPOSE, OR BOTH, SHALL NOT BE SUBJECT

TO ADDITIONAL REVIEW OR APPROVAL BY THE COMMISSION, THE OFFICE OF STATE PLANNING AND BUDGETING, THE CAPITAL DEVELOPMENT COMMITTEE, OR THE JOINT BUDGET COMMITTEE. ANY CAPITAL CONSTRUCTION PROJECT SUBJECT TO THIS PARAGRAPH (b) SHALL COMPLY WITH THE HIGH PERFORMANCE STANDARD CERTIFICATION PROGRAM ESTABLISHED PURSUANT TO SECTION 24-30-1305, C.R.S.

~~(c) The commission, the capital development committee, and the joint budget committee shall by agreement adopt procedures governing the capital development committee and joint budget committee review of projects subject to this subsection (9) and subsection (10) of this section, which agreement shall provide that, whenever possible, the capital development committee shall submit recommendations to the joint budget committee and the joint budget committee shall submit recommendations to the commission within thirty days after each committee receives the information prescribed in the agreement as necessary for its review.~~ EACH GOVERNING BOARD SHALL ENSURE, CONSISTENT WITH ITS RESPONSIBILITIES AS SET FORTH IN SECTION 5 (2) OF ARTICLE VIII OF THE STATE CONSTITUTION, THAT A CAPITAL CONSTRUCTION PROJECT INITIATED PURSUANT TO THIS SUBSECTION (9) SHALL BE IN ACCORDANCE WITH ITS INSTITUTION'S MISSION, BE OF A SIZE AND SCOPE TO PROVIDE FOR THE DEFINED PROGRAM NEEDS, AND BE DESIGNED IN ACCORDANCE WITH ALL APPLICABLE BUILDING CODES AND ACCESSIBILITY STANDARDS.

(d) (I) THE PROVISIONS OF THIS SUBSECTION (9) SHALL NOT APPLY TO A PROJECT THAT IS TO BE CONSTRUCTED IN WHOLE OR IN PART USING MONEYS SUBJECT TO THE HIGHER EDUCATION REVENUE BOND INTERCEPT PROGRAM ESTABLISHED PURSUANT TO SECTION 23-5-139.

(II) ANY PLAN FOR ANY SUCH CAPITAL CONSTRUCTION PROJECT THAT IS ESTIMATED TO REQUIRE TOTAL EXPENDITURES OF TWO MILLION DOLLARS OR LESS SHALL NOT BE SUBJECT TO REVIEW OR APPROVAL BY THE COMMISSION.

(10) (a) (I) THE COMMISSION SHALL REVIEW AND APPROVE ANY PLAN FOR A CAPITAL CONSTRUCTION PROJECT THAT IS ESTIMATED TO REQUIRE TOTAL EXPENDITURES EXCEEDING TWO MILLION DOLLARS AND THAT IS TO BE CONSTRUCTED, OPERATED, AND MAINTAINED SOLELY FROM CASH FUNDS HELD BY THE INSTITUTION THAT, IN WHOLE OR IN PART, ARE SUBJECT TO THE HIGHER EDUCATION REVENUE BOND INTERCEPT PROGRAM ESTABLISHED PURSUANT TO SECTION 23-5-139.

(II) The commission shall review and approve any plan for a capital construction project FOR AN ACADEMIC BUILDING that is estimated to require total expenditures exceeding two million dollars, ~~and that is to be constructed solely from cash funds held by the institution other than those funds specified in paragraph (a) of subsection (9) of this section~~ THAT, IN WHOLE OR IN PART, ARE SUBJECT TO THE HIGHER EDUCATION REVENUE BOND INTERCEPT PROGRAM ESTABLISHED PURSUANT TO SECTION 23-5-139, and THAT IS operated and maintained from such cash funds or from state moneys appropriated for such purpose, or both. ANY CAPITAL CONSTRUCTION PROJECT SUBJECT TO THIS SUBPARAGRAPH (II) SHALL COMPLY WITH THE HIGH PERFORMANCE STANDARD CERTIFICATION PROGRAM ESTABLISHED PURSUANT TO SECTION 24-30-1305, C.R.S.

(III) Any plan for any such capital construction project that is estimated to require total expenditures of two million dollars or less shall not be subject to review or approval by the commission.

**SECTION 3.** 24-37-304 (1) (c.3) (I), Colorado Revised Statutes, is amended to read:

**24-37-304. Additional budgeting responsibilities.** (1) In addition to the responsibilities enumerated in section 24-37-302, the office of state planning and budgeting shall:

(c.3) (I) EXCEPT FOR PROJECTS AUTHORIZED PURSUANT TO SECTION 23-1-106 (9) OR (10), C.R.S., ensure submission of all capital construction and controlled maintenance requests and proposals for the acquisition of capital assets by each state department, institution, and agency to the capital development committee no later than September 1 of each year;

**SECTION 4.** 24-30-1303 (5), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**24-30-1303. Department of personnel - responsibilities.** (5) (c) IF THE EXECUTIVE DIRECTOR DETERMINES THAT THE GOVERNING BOARD OF A STATE INSTITUTION OF HIGHER EDUCATION HAS ADOPTED PROCEDURES THAT ADEQUATELY MEET THE SAFEGUARDS SET FORTH IN THE REQUIREMENTS OF PART 14 OF THIS ARTICLE AND ARTICLE 92 OF THIS TITLE, THE EXECUTIVE DIRECTOR MAY EXEMPT THE INSTITUTION FROM ANY OF THE PROCEDURAL REQUIREMENTS OF PART 14 OF THIS ARTICLE AND ARTICLE 92 OF THIS TITLE IN REGARD TO A CAPITAL CONSTRUCTION PROJECT TO BE CONSTRUCTED PURSUANT TO THE PROVISIONS OF SECTION 23-1-106 (9) OR (10), C.R.S.; EXCEPT THAT THE SELECTION OF ANY CONTRACTOR TO PERFORM PROFESSIONAL SERVICES AS DEFINED IN SECTION 24-30-1402 (6) SHALL BE MADE IN ACCORDANCE WITH THE CRITERIA SET FORTH IN SECTION 24-30-1403 (2).

**SECTION 5.** 24-30-1405, Colorado Revised Statutes, is amended to read:

**24-30-1405. Public notice.** When professional services are required to be contracted for, public notice shall be given by the state agency if the basic construction cost of the project is estimated by the state agency to be more than five hundred thousand dollars or if the fee for the professional services is estimated to exceed fifty thousand dollars; except that, for projects under the supervision of the department of transportation OR FOR CONTRACTS WITH A STATE INSTITUTION OF HIGHER EDUCATION, public notice shall be given by the department OR INSTITUTION if the basic transportation-related construction cost OR THE BASIC CONSTRUCTION COST of the project is estimated by the department OR INSTITUTION to be more than one million dollars or if the fee for professional engineering or surveying services is estimated to exceed one hundred thousand dollars. ~~Such~~ THE public notice shall be given at least fifteen days prior to the selection of the three or more most highly qualified persons by the principal representative pursuant to section 24-30-1403 (2), and, except for projects under the supervision of the department of transportation, ~~such~~ THE public notice shall be given no later than eight weeks after the date on which the appropriation for the project becomes law. ~~Such~~ THE public notice shall be given by publication at least two times in one or more daily newspapers of

general circulation in this state; ~~and~~ EXCEPT THAT, FOR CONTRACTS WITH A STATE INSTITUTION OF HIGHER EDUCATION, PUBLIC NOTICE SHALL BE GIVEN BY PUBLICATION AT LEAST ONCE IN ONE OR MORE DAILY NEWSPAPERS OF GENERAL CIRCULATION IN THIS STATE. THE PUBLIC NOTICE shall contain a general description of the proposed project and shall indicate the procedure by which interested persons may apply for consideration for the contract.

**SECTION 6.** 24-75-303 (3) (a), Colorado Revised Statutes, is amended to read:

**24-75-303. Appropriation for capital construction.** (3) (a) ~~No~~ A capital construction project for a state-supported institution of higher education that is estimated to require total expenditures exceeding two million dollars may NOT be commenced unless:

(I) The project:

(A) Is to be constructed solely from cash funds held by the institution; ~~other than those funds specified in subparagraph (H) of this paragraph (a) and~~

~~(B) Is to be operated and maintained from such cash funds or from state moneys appropriated for such purpose, or both, and the plan for the project~~ IS TO BE CONSTRUCTED IN WHOLE OR IN PART USING MONEYS SUBJECT TO THE HIGHER EDUCATION REVENUE BOND INTERCEPT PROGRAM ESTABLISHED PURSUANT TO SECTION 23-5-139, C.R.S.; AND

(C) Has been approved by the Colorado commission on higher education pursuant to section 23-1-106 (10), C.R.S.; or

~~(II) (A) The PLAN FOR THE project is to be constructed, operated, and maintained solely from student fees, auxiliary enterprise funds, wholly endowed gifts and bequests, research building revolving funds, or a combination of such sources, and the plan has been approved by the Colorado commission on higher education in accordance with section 23-1-106 (9), C.R.S.~~ WAS CONTAINED IN THE MOST RECENT UNIFIED, TWO-YEAR CAPITAL IMPROVEMENTS PROJECTION PROVIDED PURSUANT TO SECTION 23-1-106 (6) (b), C.R.S., AS THE PROJECTION MAY BE AMENDED FROM TIME TO TIME;

(B) THE PROJECT HAS BEEN APPROVED BY THE GOVERNING BOARD OF THE INSTITUTION; AND

(C) THE PROJECT IS TO BE CONSTRUCTED, OPERATED, AND MAINTAINED SOLELY FROM CASH FUNDS HELD BY THE INSTITUTION, OR THE PROJECT IS AN ACADEMIC BUILDING AND IS TO BE CONSTRUCTED SOLELY FROM CASH FUNDS HELD BY THE INSTITUTION, BUT MAY BE OPERATED OR MAINTAINED USING CASH FUNDS OR STATE MONEYS APPROPRIATED FOR SUCH PURPOSES, OR BOTH.

**SECTION 7.** 24-92-103 (3), Colorado Revised Statutes, is amended to read:

**24-92-103. Construction of public projects - competitive sealed bidding.** (3) Adequate public notice of the invitation for bids shall be given at least fourteen days prior to the date set forth therein for the opening of bids, pursuant to rules.

Such notice may include publication by electronic on-line access pursuant to section 24-92-104.5 or in a newspaper of general circulation at least fourteen days prior to bid opening OR IN AN ELECTRONIC MEDIUM APPROVED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL.

**SECTION 8.** 38-26-107 (1), Colorado Revised Statutes, is amended to read:

**38-26-107. Supplier may file statement - notice - withholding funds.** (1) Any person, as defined in section 2-4-401 (8), C.R.S., that has furnished labor, materials, sustenance, or other supplies used or consumed by a contractor or his or her subcontractor in or about the performance of the work contracted to be done or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the work whose claim therefor has not been paid by the contractor or the subcontractor may, at any time up to and including the time of final settlement for the work contracted to be done, file with the board, officer, person, or other contracting body by whom the contract was awarded a verified statement of the amount due and unpaid on account of the claim. If the amount of the contract awarded to the contractor exceeds fifty thousand dollars, the board, officer, person, or other contracting body by whom the contract was awarded shall, no later than ten days before the final settlement is made, publish a notice of the final settlement at least twice in a newspaper of general circulation in any county where the work was contracted for or performed OR IN AN ELECTRONIC MEDIUM APPROVED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL. It is unlawful for any person to divide a public works contract into two or more separate contracts for the sole purpose of evading or attempting to evade the requirements of this subsection (1).

**SECTION 9. Act subject to petition - effective date.** (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 5, 2009, if adjournment sine die is on May 6, 2009); except that sections 2 and 6 of this act shall take effect January 1, 2010.

(2) However, if a referendum petition is filed against this act or an item, section, or part of this act during the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, shall not take effect unless approved by the people at a biennial regular general election and shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

Approved: June 1, 2009