

## CHAPTER 98

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**GOVERNMENT - STATE**

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**SENATE BILL 10-032**

BY SENATOR(S) Tapia, Foster, Schwartz, Williams;  
also REPRESENTATIVE(S) Lambert, Acree, Kerr J., Murray, Nikkel, Stephens, Todd.

**AN ACT**

**CONCERNING THE AUTHORIZATION OF AMENDMENTS TO EXISTING STATE INFORMATION TECHNOLOGY CONTRACTS FOR PURPOSES OF FURTHERING CONSOLIDATION OF THE MANAGEMENT OF STATE AGENCY INFORMATION TECHNOLOGY RESOURCES IN THE OFFICE OF INFORMATION TECHNOLOGY.**

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

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

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

(b) In 2008, in an effort to address these findings, the general assembly adopted Senate Bill 08-155, which was intended to centralize the management, budgeting, and procurement of state agency information technology resources in the office of information technology;

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

(d) The state must act quickly and efficiently to realize the benefits of

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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.*

consolidation in the current economic environment;

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

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

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

(h) It is therefore the intent of the general assembly to provide a means by which certain existing information technology contracts may be consolidated under the office of information technology in order to fully realize the benefits of centralization and standardization intended by the adoption of Senate Bill 08-155.

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

**24-37.5-105. Office - responsibilities - rules - repeal.** (10) (a) FOR PURPOSES OF CARRYING OUT THE PROVISIONS OF SUBSECTION (9) OF THIS SECTION, THE OFFICE MAY, BEGINNING ON THE EFFECTIVE DATE OF THIS SUBSECTION (10) THROUGH JUNE 30, 2012, NEGOTIATE AMENDMENTS TO EXISTING CONTRACTS ENTERED INTO BY ANY STATE AGENCY FOR INFORMATION TECHNOLOGY RESOURCES. CONTRACT AMENDMENTS MAY INCLUDE, BUT NEED NOT BE LIMITED TO, EXPANDING THE SCOPE OF THE CONTRACT TO INCLUDE ADDITIONAL STATE AGENCIES, EXTENDING THE TERM OF THE CONTRACT, AND IMPROVING CYBER SECURITY. ANY AMENDMENT NEGOTIATED PURSUANT TO THIS SECTION SHALL NOT BE CONSIDERED A SOLICITATION OR AWARD OF A CONTRACT.

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

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

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

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

(IV) THE AMENDMENT TO THE EXISTING CONTRACT DOES NOT JEOPARDIZE THE

AVAILABILITY OF FEDERAL FUNDING OR ANY OTHER SOURCE OF FUNDING USED TO MEET STATE OBLIGATIONS UNDER THE EXISTING CONTRACT;

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

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

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

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

(e) THE OFFICE SHALL CONFER WITH ANY PROVIDER THAT NOTIFIES THE OFFICE OF ITS INTEREST IN THE EXISTING CONTRACT FOR INFORMATION TECHNOLOGY RESOURCES AND REASONABLY ASSERTS THAT IT IS ABLE TO PROVIDE THE GOODS AND SERVICES PROVIDED UNDER THE CONTRACT IN A MANNER MORE FAVORABLE TO THE STATE. NOTHING IN THIS PARAGRAPH (e) SHALL BE CONSTRUED TO ALLOW THE OFFICE OR ANY STATE AGENCY TO MAKE UNILATERAL CHANGES TO AN EXISTING CONTRACT OR TO CANCEL A CONTRACT UNLESS THE CHANGE OR CANCELLATION IS IN ACCORDANCE WITH THE TERMS OF THE EXISTING CONTRACT.

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

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

(h) NO EXISTING CONTRACT FOR INFORMATION TECHNOLOGY RESOURCES SHALL BE AMENDED WITHOUT THE APPROVAL OF EACH AGENCY OF STATE GOVERNMENT THAT IS A PARTY TO THE CONTRACT. IF AN AGENCY DOES NOT APPROVE, IT SHALL PROVIDE THE OFFICE WITH A WRITTEN STATEMENT OF ITS OBJECTIONS AND THE REASONS THEREFOR. IN THE EVENT OF A DISPUTE BETWEEN THE OFFICE AND AN AGENCY THAT DOES NOT APPROVE OF THE AMENDMENT, THE GOVERNOR, OR HIS OR HER DESIGNEE, SHALL MAKE THE FINAL DECISION BY CONCURRING IN OR OVERRIDING THE AGENCY'S DISAPPROVAL.

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

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

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

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

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

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

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

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

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

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

Approved: April 15, 2010