

First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 09-0436.01 Bob Lackner

HOUSE BILL 09-1165

HOUSE SPONSORSHIP

Lambert,

SENATE SPONSORSHIP

Cadman,

House Committees
State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE CREATION OF A STATE DATABASE CONTAINING
102 INFORMATION ABOUT SOLE-SOURCE CONTRACTS TO WHICH
103 GOVERNMENTAL ENTITIES ARE A PARTY FOR THE PURPOSE OF
104 IMPLEMENTING CHANGES TO ARTICLE XXVIII OF THE STATE
105 CONSTITUTION APPROVED BY THE VOTERS IN THE 2008 GENERAL
106 ELECTION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

For the purpose of implementing changes to article XXVIII of the state constitution enacted by the voters in the 2008 general election

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.

(campaign contributions from certain government contractors), requires the department of personnel (department) to establish, operate, and maintain a publicly available database of all sole-source government contracts entered into by the state or any of its political subdivisions, and specifies the database is to be accessible from the web site maintained by the state.

Requires the database to contain a summary of each sole-source government contract (government contract) to which the state and any of its political subdivisions is a party (summary). Within a specified time, requires the contract holder of each contract to prepare and deliver to the department a true and correct copy of the summary, in a digital format as prescribed by the department, which shall:

- ! Identify the names and addresses of the contract holders and all other parties to the government contract;
- ! Briefly describe the nature of the government contract and the goods or services performed under the government contract;
- ! Disclose the beginning and expected completion dates of the government contract, the government contract's estimated dollar amount or rate of payment, and the sources of payment under the government contract; and
- ! Disclose such additional information about the government contract as the department may require for the implementation of the database that will not otherwise result in a violation of federal law, the disclosure of trade secrets, or the unauthorized or improper transfer of intellectual property.

Authorizes the department to charge contract holders a fee for submitting a summary.

Specifies that any fees collected by the department are to be transmitted to the state treasurer, who shall credit the same to the sole-source government contract database fund (fund). Creates the fund in the state treasury. Specifies that all moneys credited to the fund shall be used as provided in the act and shall not be deposited in or transferred to the general fund of the state or any other fund.

Within a specified period after a summary of the government contract has been delivered to the department by the contract holder, requires the department to publish and maintain the summary on the web site. Requires the department to maintain the summary on the web site for a specified time.

Requires the web site to allow electronic read-only access free of charge to any person who wishes to review a summary. Requires information concerning the government contracts contained in the database and accessible on the web site to be searchable by the criteria specified in the act. Allows any person to programmatically access and

search all data in the database contained in a summary in a serialized machine readable structured format. Specifies how this requirement may be satisfied.

Requires the department to promulgate rules for the more effective administration of the act.

Requires the department and the department of state to allow for the transfer of information contained in the database to the database maintained by the department of state for campaign finance purposes. Specifies that nothing in the act shall be construed to require the department to create a new database if the use of any existing database will facilitate the department's ability to satisfy the requirements of the act.

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

2 **SECTION 1.** Article 102 of title 24, Colorado Revised Statutes,
3 is amended BY THE ADDITION OF A NEW PART to read:

4 **PART 6**
5 **DATABASE OF SOLE-SOURCE**
6 **GOVERNMENT CONTRACTS**

7 **24-102-601. State database concerning sole-source government**
8 **contracts - fee - fund - rules - legislative declaration - definitions.**

9 (1) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES
10 THAT:

11 (a) (I) IN THE 2008 GENERAL ELECTION, THE VOTERS OF THE STATE
12 APPROVED CERTAIN CHANGES TO ARTICLE XXVIII OF THE STATE
13 CONSTITUTION CONCERNING SOLE-SOURCE GOVERNMENT CONTRACTS.

14 (II) AMONG THE CHANGES TO ARTICLE XXVIII OF THE STATE
15 CONSTITUTION IS THE ADDITION OF SECTION 16, WHICH REQUIRES THE
16 STATE TO PUBLISH AND MAINTAIN A SUMMARY OF EACH SOLE-SOURCE
17 GOVERNMENT CONTRACT ISSUED.

18 (b) BY ENACTING THIS PART 6, THE GENERAL ASSEMBLY INTENDS
19 TO PROVIDE SUFFICIENT DIRECTION TO PERSONS AFFECTED BY PROVISIONS

1 OF SECTION 16 OF ARTICLE XXVIII OF THE STATE CONSTITUTION TO
2 FACILITATE THE EFFECTIVE IMPLEMENTATION OF THIS CONSTITUTIONAL
3 MANDATE.

4 (2) AS USED IN THIS PART 6, UNLESS THE CONTEXT OTHERWISE
5 REQUIRES:

6 (a) "CONTRACT HOLDER" MEANS ANY NONGOVERNMENTAL PARTY
7 TO A SOLE-SOURCE GOVERNMENT CONTRACT, INCLUDING PERSONS THAT
8 CONTROL TEN PERCENT OR MORE OF SHARES OR INTEREST IN THAT PARTY,
9 THAT PARTY'S OFFICERS, DIRECTORS, OR TRUSTEES, OR, IN THE CASE OF
10 COLLECTIVE BARGAINING AGREEMENTS, A LABOR ORGANIZATION AND ANY
11 POLITICAL COMMITTEES CREATED OR CONTROLLED BY THE LABOR
12 ORGANIZATION.

13 (b) "DEPARTMENT" MEANS THE DEPARTMENT OF PERSONNEL.

14 (c) "PUBLISH" MEANS MAKING A SUMMARY ACCESSIBLE ON THE
15 WEB SITE IN ACCORDANCE WITH THE REQUIREMENTS OF THIS PART 6.

16 (d) (I) "SOLE-SOURCE GOVERNMENT CONTRACT" MEANS ANY
17 GOVERNMENT CONTRACT THAT:

18 (A) DOES NOT USE A PUBLIC AND COMPETITIVE BIDDING PROCESS
19 SOLICITING AT LEAST THREE BIDS PRIOR TO AWARDING THE CONTRACT;
20 AND

21 (B) IS A GOVERNMENT CONTRACT AWARDED BY THE STATE OR ANY
22 OF ITS POLITICAL SUBDIVISIONS FOR AMOUNTS GREATER THAN ONE
23 HUNDRED THOUSAND DOLLARS INDEXED FOR INFLATION PER THE UNITED
24 STATES BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR THE
25 DENVER-BOULDER-GREELEY METROPOLITAN STATISTICAL AREA AFTER
26 THE YEAR 2012, ADJUSTED EVERY FOUR YEARS, BEGINNING JANUARY 1,
27 2012, TO THE NEAREST LOWEST TWENTY-FIVE DOLLARS.

1 (II) THE AMOUNT SPECIFIED IN SUB-SUBPARAGRAPH (B) OF
2 SUBPARAGRAPH (I) OF THIS PARAGRAPH (d) IS CUMULATIVE AND INCLUDES
3 ALL SOLE-SOURCE GOVERNMENT CONTRACTS WITH ANY AND ALL
4 GOVERNMENTAL ENTITIES INVOLVING THE CONTRACT HOLDER DURING A
5 CALENDAR YEAR.

6 (III) A SOLE-SOURCE GOVERNMENT CONTRACT SHALL INCLUDE
7 COLLECTIVE BARGAINING AGREEMENTS WITH A LABOR ORGANIZATION
8 REPRESENTING EMPLOYEES BUT NOT EMPLOYMENT CONTRACTS WITH
9 INDIVIDUAL EMPLOYEES. A COLLECTIVE BARGAINING AGREEMENT
10 QUALIFIES AS A SOLE-SOURCE GOVERNMENT CONTRACT IF THE CONTRACT
11 CONFERS AN EXCLUSIVE REPRESENTATIVE STATUS TO BIND ALL
12 EMPLOYEES TO ACCEPT THE TERMS AND CONDITIONS OF THE CONTRACT.

13 (e) "STATE OR ANY OF ITS POLITICAL SUBDIVISIONS" MEANS THE
14 STATE OF COLORADO AND ITS AGENCIES OR DEPARTMENTS, AS WELL AS
15 THE POLITICAL SUBDIVISIONS WITHIN THIS STATE INCLUDING COUNTIES,
16 MUNICIPALITIES, SCHOOL DISTRICTS, SPECIAL DISTRICTS, AND ANY PUBLIC
17 OR QUASI-PUBLIC BODY THAT RECEIVES A MAJORITY OF ITS FUNDING FROM
18 THE TAXPAYERS OF THE STATE OF COLORADO.

19 (f) "SUMMARY" MEANS THE GOVERNMENT CONTRACT SUMMARY
20 PREPARED BY THE CONTRACT HOLDER OF A SOLE-SOURCE GOVERNMENT
21 CONTRACT IN ACCORDANCE WITH SECTION 16 OF ARTICLE XXVIII OF THE
22 STATE CONSTITUTION AND THIS PART 6.

23 (g) "WEB SITE" MEANS THE WEB SITE MAINTAINED BY THE STATE
24 ALLOWING ACCESS BY THE PUBLIC TO THE DATABASE OF SUMMARIES IN
25 ACCORDANCE WITH THE REQUIREMENTS OF THIS PART 6.

26 (3) FOR THE PURPOSE OF IMPLEMENTING, ADMINISTERING, AND
27 ENFORCING THE PROVISIONS OF SECTIONS 15, 16, AND 17 OF ARTICLE

1 XXVIII OF THE STATE CONSTITUTION AS APPROVED BY THE VOTERS IN THE
2 2008 GENERAL ELECTION, ON OR BEFORE DECEMBER 20, 2009, THE
3 DEPARTMENT SHALL ESTABLISH, OPERATE, AND MAINTAIN A PUBLICLY
4 AVAILABLE DATABASE OF ALL SOLE-SOURCE GOVERNMENT CONTRACTS
5 ENTERED INTO BY THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS,
6 WHICH SHALL BE ACCESSIBLE FROM THE WEB SITE MAINTAINED BY THE
7 STATE.

8 (4) THE DATABASE REQUIRED TO BE MAINTAINED BY SUBSECTION
9 (3) OF THIS SECTION SHALL CONTAIN A SUMMARY OF EACH SOLE-SOURCE
10 GOVERNMENT CONTRACT TO WHICH THE STATE AND ANY OF ITS POLITICAL
11 SUBDIVISIONS IS A PARTY. NOT MORE THAN THREE BUSINESS DAYS AFTER
12 EXECUTION OF A SOLE-SOURCE GOVERNMENT CONTRACT, THE CONTRACT
13 HOLDER OF EACH CONTRACT SHALL PREPARE AND DELIVER TO THE
14 DEPARTMENT A TRUE AND CORRECT COPY OF THE SUMMARY OF THE
15 CONTRACT, IN A DIGITAL FORMAT AS PRESCRIBED BY THE DEPARTMENT,
16 WHICH SHALL:

17 (a) IDENTIFY THE NAMES AND ADDRESSES OF THE CONTRACT
18 HOLDERS AND ALL OTHER PARTIES TO THE SOLE-SOURCE GOVERNMENT
19 CONTRACT;

20 (b) BRIEFLY DESCRIBE THE NATURE OF THE SOLE-SOURCE
21 GOVERNMENT CONTRACT AND THE GOODS OR SERVICES PERFORMED
22 UNDER THE CONTRACT;

23 (c) DISCLOSE THE BEGINNING AND EXPECTED COMPLETION DATES
24 OF THE SOLE-SOURCE GOVERNMENT CONTRACT, THE CONTRACT'S
25 ESTIMATED DOLLAR AMOUNT OR RATE OF PAYMENT, AND THE SOURCES OF
26 PAYMENT UNDER THE CONTRACT; AND

27 (d) DISCLOSE SUCH ADDITIONAL INFORMATION ABOUT THE

1 SOLE-SOURCE GOVERNMENT CONTRACT AS THE DEPARTMENT MAY
2 REQUIRE FOR THE IMPLEMENTATION OF SECTION 15, 16, OR 17 OF ARTICLE
3 XXVIII OF THE STATE CONSTITUTION OR THIS PART 6 THAT WILL NOT
4 OTHERWISE RESULT IN A VIOLATION OF FEDERAL LAW, THE DISCLOSURE OF
5 TRADE SECRETS, OR THE UNAUTHORIZED OR IMPROPER TRANSFER OF
6 INTELLECTUAL PROPERTY.

7 (5) (a) AS PART OF THE SUBMISSION OF THE SUMMARY REQUIRED
8 BY SUBSECTION (4) OF THIS SECTION, THE DEPARTMENT MAY CHARGE
9 CONTRACT HOLDERS A FEE. THE AMOUNT OF ANY SUCH FEE SHALL BE SET
10 BY THE DEPARTMENT BY RULE IN ACCORDANCE WITH THE REQUIREMENTS
11 OF SUBSECTION (9) OF THIS SECTION AND SHALL BE SET AT A LEVEL THAT
12 ALLOWS THE DEPARTMENT TO RECOVER THE ACTUAL DIRECT AND
13 INDIRECT COSTS OF THE DEPARTMENT IN OPERATING AND MAINTAINING
14 THE DATABASE, INCLUDING COSTS INCURRED BY THE DEPARTMENT IN
15 PROCESSING THE INFORMATION SUBMITTED BY THE CONTRACT HOLDER.

16 (b) ANY FEES COLLECTED BY THE DEPARTMENT PURSUANT TO
17 PARAGRAPH (a) OF THIS SUBSECTION (5) SHALL BE TRANSMITTED TO THE
18 STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE SOLE-SOURCE
19 GOVERNMENT CONTRACT DATABASE FUND, WHICH FUND IS HEREBY
20 CREATED IN THE STATE TREASURY. ALL MONEYS CREDITED TO THE
21 SOLE-SOURCE GOVERNMENT CONTRACT DATABASE FUND SHALL BE USED
22 AS PROVIDED IN THIS PART 6 AND SHALL NOT BE DEPOSITED IN OR
23 TRANSFERRED TO THE GENERAL FUND OF THE STATE OR ANY OTHER FUND.

24 (6) NOT MORE THAN THREE BUSINESS DAYS AFTER A SUMMARY OF
25 THE SOLE-SOURCE GOVERNMENT CONTRACT HAS BEEN DELIVERED TO THE
26 DEPARTMENT BY THE CONTRACT HOLDER PURSUANT TO SUBSECTION (4)
27 OF THIS SECTION, THE DEPARTMENT SHALL PUBLISH AND MAINTAIN THE

1 SUMMARY OF SUCH CONTRACT ON THE WEB SITE. ONCE ADDED TO THE
2 WEB SITE, THE DEPARTMENT SHALL MAINTAIN THE SUMMARY ON THE WEB
3 SITE FOR A MINIMUM PERIOD OF TWO YEARS BEYOND THE DURATION OF
4 THE CONTRACT. BY RULE, THE DEPARTMENT MAY EXTEND THE PERIOD
5 FOR MAINTAINING A SUMMARY ON THE WEB SITE.

6 (7) THE WEB SITE SHALL ALLOW ELECTRONIC READ-ONLY ACCESS
7 FREE OF CHARGE TO ANY PERSON WHO WISHES TO REVIEW A SUMMARY.
8 INFORMATION CONCERNING THE SOLE-SOURCE CONTRACTS CONTAINED IN
9 THE DATABASE AND ACCESSIBLE ON THE WEB SITE SHALL BE SEARCHABLE
10 BY CRITERIA ENUMERATED IN PARAGRAPHS (a) TO (d) OF SUBSECTION (4)
11 OF THIS SECTION. THE DATABASE SHALL ALLOW ANY PERSON TO
12 PROGRAMMATICALLY ACCESS AND SEARCH ALL DATA IN THE DATABASE
13 CONTAINED IN A SUMMARY IN A SERIALIZED MACHINE READABLE
14 STRUCTURED FORMAT. THIS REQUIREMENT MAY BE SATISFIED BY MEANS
15 OF A LANGUAGE SUCH AS XML, BY MEANS OF A WEB SERVICES
16 APPLICATION PROGRAMMING INTERFACE, OR IN ACCORDANCE WITH
17 STANDARDS AND BEST PRACTICES MAINTAINED BY THE INDUSTRY OR THE
18 OFFICE OF INFORMATION TECHNOLOGY CREATED IN SECTION 24-37.5-103.

19 (8) ANY WEB SITE MAINTAINED BY THE STATE OR ANY OF ITS
20 POLITICAL SUBDIVISIONS THAT PROVIDES INFORMATION INVITING
21 REQUESTS FOR PROPOSALS OR THAT OFFERS SIMILAR COMMUNICATION TO
22 VENDORS IN CONNECTION WITH CONTRACT BID SOLICITATIONS SHALL
23 PROVIDE A SHORT ADVISORY CONCERNING THE REQUIREMENT OF A
24 CONTRACT HOLDER TO PREPARE AND DELIVER A SUMMARY PURSUANT TO
25 SECTION 16 OF ARTICLE XXVIII OF THE STATE CONSTITUTION AND A LINK
26 TO THE WEB SITE REQUIRED TO BE ADMINISTERED BY THE DEPARTMENT IN
27 ACCORDANCE WITH THE REQUIREMENTS OF THIS PART 6.

1 (9) THE DEPARTMENT SHALL PROMULGATE RULES FOR THE MORE
2 EFFECTIVE ADMINISTRATION OF THIS PART 6 IN ACCORDANCE WITH
3 ARTICLE 4 OF THIS TITLE.

4 (10) (a) THE DEPARTMENT AND THE DEPARTMENT OF STATE SHALL
5 ALLOW FOR THE TRANSFER OF INFORMATION CONTAINED IN THE DATABASE
6 REQUIRED BY SUBSECTION (3) OF THIS SECTION TO THE DATABASE
7 MAINTAINED BY THE DEPARTMENT OF STATE FOR CAMPAIGN FINANCE
8 PURPOSES.

9 (b) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 6,
10 NOTHING IN THIS PART 6 SHALL BE CONSTRUED TO REQUIRE THE
11 DEPARTMENT TO CREATE A NEW DATABASE TO SATISFY THE
12 REQUIREMENTS OF THIS PART 6 IF THE USE OF ANY EXISTING DATABASE
13 WILL FACILITATE THE DEPARTMENT'S ABILITY TO SATISFY THE
14 REQUIREMENTS OF THIS PART 6.

15 **SECTION 2. Severability.** If any provision of this act or the
16 application thereof to any person or circumstance is held invalid, such
17 invalidity shall not affect other provisions or applications of the act that
18 can be given effect without the invalid provision or application, and to
19 this end the provisions of the act are declared to be severable.

20 **SECTION 3. Effective date.** This act shall take effect July 1,
21 2009.

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