

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 17-0153.01 Bob Lackner x4350

SENATE BILL 17-040

SENATE SPONSORSHIP

Kefalas, Gardner

HOUSE SPONSORSHIP

Pabon,

Senate Committees

State, Veterans, & Military Affairs
Appropriations

House Committees

A BILL FOR AN ACT

101 CONCERNING PUBLIC ACCESS TO FILES MAINTAINED BY
102 GOVERNMENTAL BODIES, AND, IN CONNECTION THEREWITH,
103 MAKING AN APPROPRIATION.

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/>.)

Section 2 of the bill modifies the "Colorado Open Records Act" (CORA) by creating new procedures governing the inspection of public records that are stored as structured data. **Section 1** defines key terms including "structured data", which the bill defines as digital data that is stored in a fixed field within a record or file that is capable of being

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.

SENATE
3rd Reading Unamended
March 22, 2017

SENATE
Amended 2nd Reading
March 21, 2017

automatically read, processed, or manipulated by a computer.

If public records are stored as structured data, section 2 requires the custodian of the public records to provide an accurate copy of the public records in a structured data format when requested. If public records are not stored as structured data but are stored in an electronic or digital form and are searchable in their native format, the custodian is required to provide a copy of the public records in a format that is searchable when requested.

Section 2 specifies the circumstances that exempt the custodian from having to produce records in a searchable or structured data format.

If a custodian is not able to comply with a request to produce public records in a requested format, the custodian is required to produce the records in an alternate format and to provide a written declaration attesting to the reasons the custodian is not able to produce the records in the requested format. If a court subsequently rules the custodian should have provided the data in the requested format but that the custodian reasonably believed, based upon the reasons stated in the written declaration, that the data could not be produced in the requested format, attorney fees may be awarded only if the custodian's action was arbitrary or capricious.

Nothing in the bill requires a custodian to produce records in their native format.

Section 3 expands the grounds permitting the filing of a civil action seeking inspection of a public record to include an allegation of a violation of the digital format provisions in the bill or a violation of record transmission provisions specified in CORA. This section also specifies that altering an existing record, or excising fields of information, to remove information that the custodian is required or allowed to withhold does not constitute the creation of a new public record. Such alteration or excision may be subject to a research and retrieval fee or a fee for the programming of data as allowed under existing provisions of CORA.

Section 4 modifies CORA provisions governing the copy, printout, or photograph of a public record and the imposition of a research and retrieval fee. Among these modifications:

- ! The bill deletes existing statutory language permitting the custodian to charge the same fee for services rendered in supervising the copying, printing out, or photographing of a public record as the custodian may charge for furnishing a copy, printout, or photograph;
- ! The bill replaces a reference in the statute to the phrase "manipulation of data" with the phrase "programming, coding, or custom search queries so as to convert a record into a structured data or searchable format";
- ! In connection with determining the amount of the fee for a

paper or electronic copy of a public record, the bill specifies that, if a custodian performs programming, coding, or custom search queries to create a public record, the fee for a paper or electronic copy of that record may be based on recovery of the actual or incremental costs of performing the programming, coding, or custom search queries, together with a reasonable portion of the costs associated with building and maintaining the information systems; and

- ! When a person makes a request to inspect or make copies or images of original public records, the bill permits the custodian to charge a fee for the time required for the custodian to supervise the handling of the records, when such supervision is necessary to protect the integrity or security of the original records.

Section 5 repeals the existing criminal misdemeanor offense and penalty for a willful and knowing violation of CORA.

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

2 **SECTION 1. Legislative declaration.** The general assembly
3 finds, determines, and declares that Colorado has a long and strong
4 tradition of open and transparent government. For Colorado taxpayers to
5 have confidence in the actions and activities of their government, it is
6 imperative that they have access to the public records of these
7 governments. The "Colorado Open Records Act" provides, with very
8 specific exceptions, access to government records to members of the
9 public. As technology now allows the public to access records in digital
10 formats, it is important that Colorado law reflect the new technology to
11 give the public access to records in digital formats that make it easier for
12 them to see and understand government records. Senate Bill 17-040 sets
13 parameters for information to be released in digital formats while
14 ensuring that records custodians provide public records in ways that
15 ensure that only those public records that are subject to disclosure are
16 released. Senate Bill 17-040 makes no changes to what public records are

1 available for, or protected from disclosure, regardless of the medium in
2 which the public records are maintained, consistent with existing law.
3 Current law governing which public records are confidential and not
4 subject to disclosure and those that must be released remains unchanged.

5 **SECTION 2.** In Colorado Revised Statutes, 24-72-202, **amend**
6 **(6)(a)(I) and (7); and add (1.4), (2.3), (6)(b)(XIV), (6.3), and (6.4) as**
7 **follows:**

8 **24-72-202. Definitions.** As used in this part 2, unless the context
9 otherwise requires:

10 (1.4) "INFRASTRUCTURE SECURITY DATA" MEANS ANY RECORD THE
11 DISCLOSURE OF WHICH COULD ENDANGER PUBLIC SAFETY OR THE
12 OPERATION OF CRITICAL INFRASTRUCTURE. SUCH RECORDS INCLUDE
13 DETAILED DRAWINGS, SCHEMATIC DIAGRAMS, SPECIFICATIONS, SECURITY
14 CODES, VULNERABILITY ASSESSMENTS, PROTECTIVE MEASURES,
15 EMERGENCY RESPONSE PLANS, SYSTEM OPERATIONAL DATA, AND THE
16 EXACT PHYSICAL LOCATIONS OF HAZARDOUS MATERIALS. FOR PURPOSES
17 OF THIS SUBSECTION (1.4), "CRITICAL INFRASTRUCTURE" INCLUDES
18 BRIDGES, TUNNELS, DAMS, WATER TREATMENT SUPPLY AND DELIVERY
19 SYSTEMS, WASTEWATER COLLECTION AND TREATMENT SYSTEMS,
20 RAILWAYS, AIRPORTS, COMMUNICATIONS OR BROADBAND NETWORKS,
21 ELECTRIC GENERATION TRANSMISSION AND DISTRIBUTION SYSTEMS,
22 NATURAL GAS TRANSMISSION AND DISTRIBUTION SYSTEMS, AND PUBLIC
23 BUILDINGS.

24 (2.3) "NATIVE FORMAT" MEANS THE FORMAT IN WHICH A FILE OR
25 DATABASE CONFIGURATION OR SCHEMA WAS ORIGINALLY CREATED OR IS
26 STORED ON THE CUSTODIAN'S COMPUTER OR SERVER.

27 (6) (a) (I) "Public records" means and includes all writings made,

1 maintained, or kept by the state, any agency, institution, a nonprofit
2 corporation incorporated pursuant to section 23-5-121 (2), C.R.S., or
3 political subdivision of the state, or that are described in section 29-1-902
4 C.R.S., and held by any local-government-financed entity for use in the
5 exercise of functions required or authorized by law or administrative rule
6 or involving the receipt or expenditure of public funds. FOR PURPOSES OF
7 THIS PART 2, THE TERMS "STATE" AND "AGENCY" INCLUDE THE JUDICIAL
8 DEPARTMENT OF STATE GOVERNMENT.

9 (6) (b) "Public records" does not include:

10 (XIV) INFRASTRUCTURE SECURITY DATA.

11 (6.3) "SEARCHABLE" MEANS CAPABLE OF BEING READ BY A
12 COMPUTER.

13 (6.4) "STRUCTURED DATA" MEANS DIGITAL DATA THAT IS STORED
14 IN A FIXED FIELD WITHIN A RECORD OR FILE THAT IS CAPABLE OF BEING
15 AUTOMATICALLY READ, PROCESSED, OR MANIPULATED BY A COMPUTER.

16 "STRUCTURED DATA" INCLUDES DATA CONTAINED IN RELATIONAL
17 DATABASES AND SPREADSHEETS.

18 (7) "Writings" means and includes all books, papers, maps,
19 photographs, cards, tapes, recordings, or other documentary materials,
20 regardless of physical form or characteristics. "Writings" includes
21 digitally stored data, including without limitation electronic mail
22 messages. ~~but does not include computer software.~~ "WRITINGS" DOES NOT
23 INCLUDE A COMPUTER PROGRAM OR SOFTWARE, BUT DOES INCLUDE THE
24 INFORMATION USED AS INPUT FOR THE COMPUTER PROGRAM AND THE
25 INFORMATION PRODUCED AS A PRODUCT OF THE COMPUTER PROGRAM,
26 EXCEPT AS OTHERWISE PROVIDED BY LAW.

27 **SECTION 3.** In Colorado Revised Statutes, 24-72-203, **add**

1 (2)(c) as follows:

2 **24-72-203. Public records open to inspection. (2) (c) IF THE**
3 **CUSTODIAN HAS MADE THE REQUESTED RECORDS PUBLICLY AVAILABLE IN**
4 **A STRUCTURED DATA FORMAT, THE CUSTODIAN MAY SATISFY THE**
5 **REQUEST BY REDIRECTING THE REQUESTER, IN WRITING AND IN DETAIL, TO**
6 **THE LOCATION OF THE RECORDS.**

7 **SECTION 4.** In Colorado Revised Statutes, **add 24-72-203.5** as
8 follows:

9 **24-72-203.5. Storage of records as structured data - request**
10 **for copies - definition. (1) (a) EXCEPT AS OTHERWISE REQUIRED BY**
11 **SUBSECTION (1)(b) OF THIS SECTION:**

12 (I) IF PUBLIC RECORDS ARE STORED AS STRUCTURED DATA, THE
13 CUSTODIAN SHALL PROVIDE AN ACCURATE COPY OF THE PUBLIC RECORDS
14 IN A STRUCTURED DATA FORMAT WHEN REQUESTED; AND

15 (II) IF PUBLIC RECORDS ARE NOT STORED AS STRUCTURED DATA
16 BUT ARE STORED IN AN ELECTRONIC OR DIGITAL FORM AND ARE
17 SEARCHABLE IN THEIR NATIVE FORMAT, THE CUSTODIAN SHALL PROVIDE
18 A COPY OF THE PUBLIC RECORDS IN A FORMAT THAT IS SEARCHABLE WHEN
19 REQUESTED.

20 (b) A CUSTODIAN IS NOT REQUIRED TO PRODUCE RECORDS IN A
21 SEARCHABLE OR STRUCTURED DATA FORMAT IN ACCORDANCE WITH
22 SUBSECTION (1)(a) OF THIS SECTION IF:

23 (I) AFTER MAKING REASONABLE INQUIRIES WITHIN THE ENTITY,
24 THE CUSTODIAN CONCLUDES THAT IT IS NOT TECHNOLOGICALLY OR
25 PRACTICALLY FEASIBLE TO PRODUCE AN ACCURATE COPY OF THE
26 REQUESTED INFORMATION IN A SEARCHABLE OR STRUCTURED FORMAT;

27 (II) THE CUSTODIAN WOULD BE REQUIRED TO PURCHASE

1 SOFTWARE OR HARDWARE, OR TO CREATE ADDITIONAL PROGRAMMING OR
2 FUNCTIONALITY IN ITS EXISTING SOFTWARE OR HARDWARE, TO
3 ACCOMMODATE THE REQUEST;

4 (III) PRODUCING THE DATA IN THE REQUESTED FORMAT WOULD
5 VIOLATE THE TERMS OF ANY COPYRIGHT OR LICENSING AGREEMENT
6 BETWEEN THE CUSTODIAN AND A THIRD PARTY OR RESULT IN THE RELEASE
7 OF A THIRD PARTY'S PROPRIETARY INFORMATION; OR

8 (IV) IT IS NOT TECHNOLOGICALLY FEASIBLE TO PERMANENTLY
9 REMOVE INFORMATION THAT THE CUSTODIAN IS REQUIRED OR ALLOWED
10 TO WITHHOLD WITHIN THE REQUESTED FORMAT, OR THE CUSTODIAN
11 WOULD BE REQUIRED TO PURCHASE SOFTWARE OR CREATE ADDITIONAL
12 PROGRAMMING OR FUNCTIONALITY IN ITS EXISTING SOFTWARE TO REMOVE
13 THE INFORMATION.

14 (2) IF A CUSTODIAN IS NOT ABLE TO COMPLY WITH A REQUEST TO
15 PRODUCE PUBLIC RECORDS THAT ARE SUBJECT TO DISCLOSURE IN A
16 REQUESTED FORMAT SPECIFIED IN SUBSECTION (1)(a) OF THIS SECTION, THE
17 CUSTODIAN MUST PRODUCE THE RECORDS IN AN ALTERNATE FORMAT OR
18 ISSUE A DENIAL UNDER SECTION 24-72-204 AND SHALL PROVIDE A
19 WRITTEN DECLARATION ATTESTING TO THE REASONS THE CUSTODIAN IS
20 NOT ABLE TO PRODUCE THE RECORDS IN THE REQUESTED FORMAT. IF A
21 COURT SUBSEQUENTLY RULES THE CUSTODIAN SHOULD HAVE PROVIDED
22 THE DATA IN THE REQUESTED FORMAT, ATTORNEY FEES MAY BE AWARDED
23 ONLY IF THE CUSTODIAN'S ACTION WAS ARBITRARY OR CAPRICIOUS.

24 (3) NOTHING IN THIS SECTION REQUIRES A CUSTODIAN TO PRODUCE
25 RECORDS IN THEIR NATIVE FORMAT OR TO RELEASE METADATA.

26 (4) WHEN A CUSTODIAN PRODUCES RECORDS IN A SEARCHABLE OR
27 STRUCTURED FORMAT IN ACCORDANCE WITH SUBSECTION (1)(a) OF THIS

1 SECTION, THE CHOICE OF FORMAT IS IN THE SOLE DISCRETION OF THE
2 CUSTODIAN.

3 (5) FOR PURPOSES OF THIS SECTION, "ACCURATE COPY" MEANS A
4 RECORD THAT IS A TRUE AND CORRECT REPRESENTATION OF THE ORIGINAL
5 DATA AT THE TIME THE COPY IS GENERATED.

6 (6) NOTHING IN THIS SECTION RELIEVES OR MITIGATES THE
7 OBLIGATIONS OF A CUSTODIAN TO PRODUCE RECORDS IN A FORMAT
8 ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES IN ACCORDANCE WITH
9 TITLE II OF THE FEDERAL "AMERICANS WITH DISABILITIES ACT", 42
10 U.S.C. SEC. 12131 ET. SEQ., AND OTHER FEDERAL OR STATE LAWS.

11 **SECTION 5.** In Colorado Revised Statutes, 24-72-204, **amend**
12 **(5); and add (1)(e), (2)(a)(X), (3.5)(b.5), (4.5), and (9) as follows:**

13 **24-72-204. Allowance or denial of inspection - grounds -**
14 **procedure - appeal - definitions.** (1) The custodian of any public
15 records shall allow any person the right of inspection of such records or
16 any portion thereof except on one or more of the following grounds or as
17 provided in subsection (2) or (3) of this section:

18 (e) SUCH INSPECTION SEEKS ACCESS TO INFRASTRUCTURE
19 SECURITY DATA.

20 (2) (a) The custodian may deny the right of inspection of the
21 following records, unless otherwise provided by law, on the ground that
22 disclosure to the applicant would be contrary to the public interest:

23 (X) SOFTWARE PROGRAMS; NETWORK AND SYSTEMS
24 ARCHITECTURAL DESIGNS; SOURCE CODE; SOURCE DOCUMENTATION;
25 INFORMATION IN TANGIBLE OR INTANGIBLE FORM RELATING TO RELEASED
26 AND UNRELEASED SOFTWARE OR HARDWARE, DATABASE DESIGN
27 STRUCTURES, DATABASE SCHEMA AND ARCHITECTURE, SECURITY

1 STRUCTURES AND ARCHITECTURE, AND DATA STORED IN SUPPORT
2 STRUCTURES; AGENCY ORIGINAL DESIGN IDEAS; NONPUBLIC BUSINESS
3 POLICIES AND PRACTICES RELATING TO SOFTWARE DEVELOPMENT AND
4 USE; AND THE TERMS AND CONDITIONS OF ANY ACTUAL OR PROPOSED
5 LICENSE AGREEMENT OR OTHER AGREEMENT CONCERNING THE PRODUCTS
6 AND LICENSING NEGOTIATIONS.

7 (3.5) (b.5) (I) ANY PUBLIC EMPLOYEE, OR FORMER PUBLIC
8 EMPLOYEE, OF ANY BRANCH OR LEVEL OF GOVERNMENT, MAY REQUEST
9 THAT HIS OR HER HOME ADDRESS, PERSONAL TELEPHONE NUMBER, OR
10 OTHER SIMILAR PERSONAL IDENTIFYING OR LOCATION INFORMATION BE
11 WITHHELD FROM THE PRODUCTION OF ANY PUBLIC RECORDS PRODUCED IN
12 A STRUCTURED DATA OR SEARCHABLE FORMAT PURSUANT TO SECTION
13 24-72-203.5 BY PRESENTING TO ANY CUSTODIAN OF SUCH PUBLIC RECORDS
14 A WRITTEN DECLARATION SIGNED BY THE EMPLOYEE ATTESTING THAT
15 DISCLOSURE OF THE PERSONAL IDENTIFYING OR LOCATION INFORMATION
16 POSES A CREDIBLE RISK TO THE HEALTH, WELFARE, SAFETY, OR SECURITY
17 OF THE EMPLOYEE OR TO ANY MEMBER OF THE EMPLOYEE'S FAMILY OR
18 HOUSEHOLD.

19 (II) UPON RECEIPT OF A SIGNED DECLARATION DESCRIBED IN
20 SUBSECTION (3.5)(b.5)(I) OF THIS SECTION OR A DECLARATION
21 CONTAINING THE SAME INFORMATION DESCRIBED IN SUBSECTION
22 (3.5)(b.5)(I) OF THIS SECTION THAT HAS BEEN EXECUTED BY A FEDERAL
23 LAW ENFORCEMENT AGENCY, POST CERTIFIED LAW ENFORCEMENT
24 OFFICIAL, OR A JUDICIAL OFFICER, THE CUSTODIAN OF ANY PUBLIC
25 RECORDS PRODUCED IN A STRUCTURED DATA OR SEARCHABLE FORMAT
26 CONTAINING THE PERSONAL IDENTIFYING OR LOCATION INFORMATION
27 DESCRIBED IN SUBSECTION (3.5)(b.5)(I) OF THIS SECTION SHALL EITHER

1 DENY THE INSPECTION OF SUCH PUBLIC RECORDS OR SHALL REDACT FROM
2 ANY SUCH PUBLIC RECORDS PROVIDED TO ANY REQUESTER IN A
3 STRUCTURED DATA OR SEARCHABLE FORMAT THE EMPLOYEE'S PERSONAL
4 IDENTIFYING OR LOCATION INFORMATION.

5 (III) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO CLAIM
6 OF ANY KIND MAY BE ASSERTED AGAINST EITHER ANY RECORDS
7 CUSTODIAN OR ANY AGENCY OF GOVERNMENT THAT IS PREMISED ON THE
8 FAILURE OF THE CUSTODIAN OR THE AGENCY TO COMPLY WITH THE
9 REQUIREMENTS OF SUBSECTION (3.5)(b.5)(II) OF THIS SECTION.

10 (4.5) IF THE CUSTODIAN DENIES ACCESS TO ANY RECORD ON THE
11 GROUND THAT THE RECORD CONTAINS INFRASTRUCTURE SECURITY DATA,
12 THE CUSTODIAN SHALL FORTHWITH FURNISH THE APPLICANT WITH A
13 WRITTEN STATEMENT SPECIFYING WHY THE REQUESTED RECORD IS
14 INFRASTRUCTURE SECURITY DATA. AT THE SAME TIME, THE CUSTODIAN
15 SHALL ALSO PROVIDE COPIES OF THE WRITTEN STATEMENT TO THE
16 ATTORNEY GENERAL OF THE STATE AND ALSO TO THE DIVISION OF
17 HOMELAND SECURITY AND EMERGENCY MANAGEMENT WITHIN THE
18 DEPARTMENT OF PUBLIC SAFETY CREATED IN SECTION 24-33.5-1603 (1).
19 THE APPLICANT MAY APPLY TO THE STATE DISTRICT COURT FOR THE
20 JUDICIAL DISTRICT IN WHICH THE RECORD IS LOCATED FOR A
21 DETERMINATION THAT THE REQUESTED RECORD IS IN FACT A PUBLIC
22 RECORD IN ACCORDANCE WITH THIS PART 2 AND DOES NOT SATISFY THE
23 DEFINITION OF INFRASTRUCTURE SECURITY DATA SPECIFIED IN SECTION
24 24-72-202 (1.4). IN AN ACTION BROUGHT UNDER THIS SUBSECTION (4.5),
25 THE APPLICANT BEARS THE BURDEN OF PROOF.

26 (5) Except as provided in subsection (5.5) of this section, any
27 person denied the right to inspect any record covered by this part 2, OR

1 WHO ALLEGES A VIOLATION OF DIGITAL FORMAT PROVISIONS UNDER
2 SECTION 24-72-203.5 OR A VIOLATION OF RECORD TRANSMISSION
3 PROVISIONS SPECIFIED IN SECTION 24-72-205, may apply to the district
4 court of the district wherein the record is found for an order directing the
5 custodian of such record to show cause why the custodian should not
6 permit the inspection of such record; except that, at least three business
7 days prior to filing an application with the district court, the person who
8 has been denied the right to inspect the record shall file a written notice
9 with the custodian who has denied the right to inspect the record
10 informing said custodian that the person intends to file an application
11 with the district court. Hearing on such application shall be held at the
12 earliest practical time. Unless the court finds that the denial of the right
13 of inspection was proper, it shall order the custodian to permit such
14 inspection and shall award court costs and reasonable attorney fees to the
15 prevailing applicant in an amount to be determined by the court; except
16 that no court costs and attorney fees shall be awarded to a person who has
17 filed a lawsuit against a state public body or local public body and who
18 applies to the court for an order pursuant to this subsection (5) for access
19 to records of the state public body or local public body being sued if the
20 court finds that the records being sought are related to the pending
21 litigation and are discoverable pursuant to chapter 4 of the Colorado rules
22 of civil procedure. In the event the court finds that the denial of the right
23 of inspection was proper, the court shall award court costs and reasonable
24 attorney fees to the custodian if the court finds that the action was
25 frivolous, vexatious, or groundless. IN ANY CASE ALLEGING A VIOLATION
26 OF DIGITAL FORMAT PROVISIONS, THE ATTORNEY FEE PROVISIONS
27 SPECIFIED IN SECTION 24-72-203.5 (2) MUST APPLY.

1 (9) ALTERING AN EXISTING PUBLIC RECORD, OR EXCISING FIELDS OF
2 INFORMATION, TO REMOVE INFORMATION THAT THE CUSTODIAN IS
3 REQUIRED OR ALLOWED TO WITHHOLD DOES NOT CONSTITUTE THE
4 CREATION OF A NEW PUBLIC RECORD. SUCH ALTERATION OR EXCISION MAY
5 BE SUBJECT TO A RESEARCH AND RETRIEVAL FEE OR A FEE FOR THE
6 PROGRAMMING OF DATA AS ALLOWED UNDER SECTION 24-72-205.

7 **SECTION 6.** In Colorado Revised Statutes, **amend** 24-72-205 as
8 follows:

9 **24-72-205. Copy, printout, or photograph of a public record**
10 **- imposition of research and retrieval fee.** (1) (a) In all cases in which
11 a person has the right to inspect a public record, the person may request
12 a copy, printout, or photograph of the record. The custodian shall furnish
13 a copy, printout, or photograph and may charge a fee determined in
14 accordance with ~~subsection (5)~~ of this section; except that, when the
15 custodian is the secretary of state, fees shall be determined and collected
16 pursuant to section 24-21-104 (3), and when the custodian is the
17 executive director of the department of personnel, fees shall be
18 determined and collected pursuant to section 24-80-102 (10). Where the
19 fee for a certified copy or other copy, printout, or photograph of a record
20 is specifically prescribed by law, the specific fee shall apply.

21 (b) Upon request for records transmission by a person seeking a
22 copy of any public record, the custodian shall transmit a copy of the
23 record by United States mail, other delivery service, facsimile, or
24 electronic mail. No transmission fees may be charged to the record
25 requester for transmitting public records via electronic mail. Within the
26 period specified in section 24-72-203 (3)(a), the custodian shall notify the
27 record requester that a copy of the record is available but will only be sent

1 to the requester once the custodian either receives payment or makes
2 arrangements for receiving payment for all costs associated with records
3 transmission and for all other fees lawfully allowed, unless recovery of
4 all or any portion of such costs or fees has been waived by the custodian.
5 Upon either receiving such payment or making arrangements to receive
6 such payment at a later date, the custodian shall send the record to the
7 requester as soon as practicable but no more than three business days after
8 receipt of, or making arrangements to receive, such payment.

9 (2) If the custodian does not have facilities for making a copy,
10 printout, or photograph of a record that a person has the right to inspect,
11 the person shall be granted access to the record for the purpose of making
12 a copy, printout, or photograph. The copy, printout, or photograph shall
13 be made while the record is in the possession, custody, and control of the
14 custodian thereof and shall be subject to the supervision of the custodian.
15 When practical, the copy, printout, or photograph shall be made in the
16 place where the record is kept, but if it is impractical to do so, the
17 custodian may allow arrangements to be made for the copy, printout, or
18 photograph to be made at other facilities. If other facilities are necessary,
19 the cost of providing them shall be paid by the person desiring a copy,
20 printout, or photograph of the record. The custodian may establish a
21 reasonable schedule of times for making a copy, printout, or photograph.
22 ~~and may charge the same fee for the services rendered in supervising the~~
23 ~~copying, printing out, or photographing as the custodian may charge for~~
24 ~~furnishing a copy, printout, or photograph under subsection (5) of this~~
25 ~~section.~~

26 (3) If, in response to a specific request, the state or any of its
27 agencies, institutions, or political subdivisions has performed a

1 ~~manipulation of data~~ PROGRAMMING, CODING, OR CUSTOM SEARCH
2 QUERIES SO AS TO CONVERT A RECORD INTO A STRUCTURED DATA OR
3 SEARCHABLE FORMAT so as to generate a record in a form not used by the
4 state or by said agency, institution, or political subdivision, a reasonable
5 fee may be charged to the person making the request. Such fee shall not
6 exceed the actual cost of ~~manipulating the said data~~ PROGRAMMING,
7 CODING, OR CUSTOM SEARCH QUERIES and generating the said record in
8 accordance with the request. Persons making subsequent requests for the
9 same or similar records may be charged a fee not in excess of the original
10 fee.

11 (4) ~~If the public record is a result of computer output other than~~
12 ~~word processing, the fee for a copy, printout, or photograph thereof may~~
13 ~~be based on recovery of the actual incremental costs of providing the~~
14 ~~electronic services and products together with a reasonable portion of the~~
15 ~~costs associated with building and maintaining the information system.~~
16 ~~Such fee may be reduced or waived by the custodian if the electronic~~
17 ~~services and products are to be used for a public purpose, including public~~
18 ~~agency program support, nonprofit activities, journalism, and academic~~
19 ~~research. Fee reductions and waivers shall be uniformly applied among~~
20 ~~persons who are similarly situated~~ IF A CUSTODIAN PERFORMS
21 PROGRAMMING, CODING, OR CUSTOM SEARCH QUERIES TO CREATE A PUBLIC
22 RECORD, THE FEE FOR A PAPER OR ELECTRONIC COPY OF THAT RECORD MAY
23 BE BASED ON RECOVERY OF THE ACTUAL OR INCREMENTAL COSTS OF
24 PERFORMING THE PROGRAMMING, CODING, OR CUSTOM SEARCH QUERIES,
25 TOGETHER WITH A REASONABLE PORTION OF THE COSTS ASSOCIATED WITH
26 BUILDING AND MAINTAINING THE INFORMATION SYSTEMS.

27 (5) (a) A custodian may charge a fee not to exceed twenty-five

1 cents per standard page for a PAPER copy of a public record or a fee not to
2 exceed the actual cost of providing a copy, printout, or photograph of a
3 public record in a format other than a standard page.

4 (b) Notwithstanding ~~paragraph (a) of this subsection (5)~~
5 SUBSECTIONS (4) AND (5)(a) OF THIS SECTION, an institution, as defined in
6 section 24-72-202 (1.5), that is the custodian of scholastic achievement
7 data on an individual person may charge a reasonable fee for a certified
8 transcript of the data.

9 (6) (a) A custodian may impose a fee in response to a request for
10 the research and retrieval of public records only if the custodian has, prior
11 to the date of receiving the request, either posted on the custodian's
12 website or otherwise published a written policy that specifies the
13 applicable conditions concerning the research and retrieval of public
14 records by the custodian, including the amount of any current fee. Under
15 any such policy, the custodian shall not impose a charge for the first hour
16 of time expended in connection with the research and retrieval of public
17 records. After the first hour of time has been expended, the custodian may
18 charge a fee for the research and retrieval of public records that shall not
19 exceed thirty dollars per hour.

20 (b) WHEN A PERSON HAS MADE A REQUEST TO INSPECT OR MAKE
21 COPIES OR IMAGES OF ORIGINAL PUBLIC RECORDS, THE CUSTODIAN MAY
22 CHARGE A FEE IN ACCORDANCE WITH SUBSECTION (6)(a) OF THIS SECTION
23 FOR THE TIME REQUIRED FOR THE CUSTODIAN TO SUPERVISE THE HANDLING
24 OF THE RECORDS, WHEN SUCH SUPERVISION IS NECESSARY TO PROTECT THE
25 INTEGRITY OR SECURITY OF THE ORIGINAL RECORDS.

26 ~~(b)~~ (c) On July 1, 2019, and by July 1 of every five-year period
27 thereafter, the director of research of the legislative council appointed

1 pursuant to section 2-3-304 (1) C.R.S., shall adjust the maximum hourly
2 fee specified in ~~paragraph (a) of this subsection (6)~~ SUBSECTION (6)(a) OF
3 THIS SECTION in accordance with the percentage change over the period
4 in the United States department of labor, bureau of labor statistics,
5 consumer price index for Denver-Boulder-Greeley, all items, all urban
6 consumers, or its successor index. The director of research shall post the
7 adjusted maximum hourly fee on the website of the general assembly.

8 **SECTION 7.** In Colorado Revised Statutes, **repeal** 24-72-206 as
9 follows:

10 **24-72-206. Violation - penalty.** ~~Any person who willfully and~~
11 ~~knowingly violates the provisions of this part 2 is guilty of a misdemeanor~~
12 ~~and, upon conviction thereof, shall be punished by a fine of not more than~~
13 ~~one hundred dollars, or by imprisonment in the county jail for not more~~
14 ~~than ninety days, or by both such fine and imprisonment.~~

15 **SECTION 8. Appropriation.** (1) For the 2017-18 state fiscal
16 year, \$50,810 is appropriated to the judicial department for use by the
17 office of the state public defender. This appropriation is from the general
18 fund. To implement this act, the office may use this appropriation as
19 follows:

20 (a) \$44,492 for for personal services, which amount is based on an
21 assumption that the office will require an additional 0.8 FTE;

22 (b) \$5,463 for operating expenses; and

23 (c) \$855 for the purchase of legal services.

24 (2) For the 2017-18 state fiscal year, \$855 is appropriated to the
25 department of law. This appropriation is from reappropriated funds
26 received from the office of the state public defender in the judicial
27 department under subsection (1)(c) of this section. To implement this act,

1 the department of law may use this appropriation to provide legal services
2 for the office of the state public defender in the judicial department.

3 **SECTION 9. Act subject to petition - effective date.** This act
4 takes effect at 12:01 a.m. on the day following the expiration of the
5 ninety-day period after final adjournment of the general assembly (August
6 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
7 referendum petition is filed pursuant to section 1 (3) of article V of the
8 state constitution against this act or an item, section, or part of this act
9 within such period, then the act, item, section, or part will not take effect
10 unless approved by the people at the general election to be held in
11 November 2018 and, in such case, will take effect on the date of the
12 official declaration of the vote thereon by the governor.