

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 17-0711.01 Bob Lackner x4350

HOUSE BILL 17-1177

HOUSE SPONSORSHIP

Wist and Garnett,

SENATE SPONSORSHIP

Cooke,

House Committees

State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE USE OF ALTERNATIVE METHODS OF RESOLVING**
102 **DISPUTES THAT ARISE UNDER THE "COLORADO OPEN RECORDS**
103 **ACT".**

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>.)

Commencing on the effective date of the bill, any person denied the right to inspect documents under the "Colorado Open Records Act" (CORA) or who alleges other CORA violations may apply to the state district court in which the record is located for an appropriate order. The bill also permits the parties in good faith to participate in mediation to

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.

resolve their dispute.

The bill provides immunity for the disclosure of privileged or confidential information to the mediator.

The bill specifies requirements and procedures governing the mediation, including situations where:

- ! The party disputing the custodian's decision has chosen not to participate in the mediation before seeking a district court order;
- ! The parties participated in mediation but were unable to resolve their dispute without filing a court order; and
- ! The parties did not participate in mediation.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-72-204, **amend**
3 (5) as follows:

4 **24-72-204. Allowance or denial of inspection - grounds -**
5 **procedure - appeal - definitions.** (5) (a) Except as provided in
6 subsection (5.5) of this section, any person denied the right to inspect any
7 record covered by this part 2 may apply to the district court of the district
8 wherein the record is found for an order directing the custodian of such
9 record to show cause why the custodian should not permit the inspection
10 of such record; except that, at least ~~three business~~ FOURTEEN days prior
11 to filing an application with the district court, the person who has been
12 denied the right to inspect the record shall file a written notice with the
13 custodian who has denied the right to inspect the record informing ~~said~~
14 THE custodian that the person intends to file an application with the
15 district court. DURING THE FOURTEEN DAY PERIOD BEFORE THE PERSON
16 MAY FILE AN APPLICATION WITH THE DISTRICT COURT UNDER THIS
17 SUBSECTION (5)(a), THE CUSTODIAN WHO HAS DENIED THE RIGHT TO
18 INSPECT THE RECORD SHALL EITHER MEET IN PERSON OR COMMUNICATE
19 ON THE TELEPHONE WITH THE PERSON WHO HAS BEEN DENIED ACCESS TO

1 THE RECORD TO DETERMINE IF THE DISPUTE MAY BE RESOLVED WITHOUT
2 FILING AN APPLICATION WITH THE DISTRICT COURT. THE MEETING MAY
3 INCLUDE RECOURSE TO ANY METHOD OF DISPUTE RESOLUTION THAT IS
4 AGREEABLE TO BOTH PARTIES. ANY COMMON EXPENSE NECESSARY TO
5 RESOLVE THE DISPUTE MUST BE APPORTIONED EQUALLY BETWEEN OR
6 AMONG THE PARTIES UNLESS THE PARTIES HAVE AGREED TO A DIFFERENT
7 METHOD OF ALLOCATING THE COSTS BETWEEN OR AMONG THEM. IF THE
8 PERSON WHO HAS BEEN DENIED ACCESS TO INSPECT A RECORD STATES IN
9 THE REQUIRED WRITTEN NOTICE TO THE CUSTODIAN THAT THE PERSON
10 NEEDS TO PURSUE ACCESS TO THE RECORD ON AN EXPEDITED BASIS, THE
11 PERSON MUST PROVIDE SUCH WRITTEN NOTICE, INCLUDING A FACTUAL
12 BASIS OF THE EXPEDITED NEED FOR THE RECORD, TO THE CUSTODIAN AT
13 LEAST THREE BUSINESS DAYS PRIOR TO THE DATE ON WHICH THE PERSON
14 FILES THE APPLICATION WITH THE DISTRICT COURT AND, IN SUCH
15 CIRCUMSTANCES, NO MEETING TO DETERMINE IF THE DISPUTE MAY BE
16 RESOLVED WITHOUT FILING AN APPLICATION WITH THE DISTRICT COURT IS
17 REQUIRED.

18 (b) Hearing on ~~such~~ THE application ~~shall~~ DESCRIBED IN
19 SUBSECTION (5)(a) OF THIS SECTION MUST be held at the earliest practical
20 time. Unless the court finds that the denial of the right of inspection was
21 proper, it shall order the custodian to permit such inspection and shall
22 award court costs and reasonable attorney fees to the prevailing applicant
23 in an amount to be determined by the court; except that no court costs and
24 attorney fees shall be awarded to a person who has filed a lawsuit against
25 a state public body or local public body and who applies to the court for
26 an order pursuant to ~~this subsection (5)~~ SUBSECTION (5)(a) OF THIS
27 SECTION for access to records of the state public body or local public body

1 being sued if the court finds that the records being sought are related to
2 the pending litigation and are discoverable pursuant to chapter 4 of the
3 Colorado rules of civil procedure. In the event the court finds that the
4 denial of the right of inspection was proper, the court shall award court
5 costs and reasonable attorney fees to the custodian if the court finds that
6 the action was frivolous, vexatious, or groundless.

7 **SECTION 2. Act subject to petition - effective date -**
8 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
9 the expiration of the ninety-day period after final adjournment of the
10 general assembly (August 9, 2017, if adjournment sine die is on May 10,
11 2017); except that, if a referendum petition is filed pursuant to section 1
12 (3) of article V of the state constitution against this act or an item, section,
13 or part of this act within such period, then the act, item, section, or part
14 will not take effect unless approved by the people at the general election
15 to be held in November 2018 and, in such case, will take effect on the
16 date of the official declaration of the vote thereon by the governor.

17 (2) This act applies to requests for inspections of public records
18 submitted on or after the applicable effective date of this act.