

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

May 9, 2017
Date

Committee on Appropriations.

After consideration on the merits, the Committee recommends the following:

SB17-040 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Strike the Finance Committee Report, dated April 24, 2017, and
2 substitute:

3 "Amend reengrossed bill, strike everything below the enacting clause and
4 substitute:

5 "SECTION 1. In Colorado Revised Statutes, 24-72-203, **add**
6 (3.5) as follows:

7 **24-72-203. Public records open to inspection.** (3.5) (a) EXCEPT
8 AS OTHERWISE REQUIRED BY SUBSECTION (3.5)(b) OF THIS SECTION:

9 (I) IF A PUBLIC RECORD IS STORED IN A DIGITAL FORMAT THAT IS
10 NEITHER SEARCHABLE NOR SORTABLE, THE CUSTODIAN SHALL PROVIDE A
11 COPY OF THE PUBLIC RECORD IN A DIGITAL FORMAT.

12 (II) IF A PUBLIC RECORD IS STORED IN A DIGITAL FORMAT THAT IS
13 SEARCHABLE BUT NOT SORTABLE, THE CUSTODIAN SHALL PROVIDE A COPY
14 OF THE PUBLIC RECORD IN A SEARCHABLE FORMAT.

15 (III) IF A PUBLIC RECORD IS STORED IN A DIGITAL FORMAT THAT IS
16 SORTABLE, THE CUSTODIAN SHALL PROVIDE A COPY OF THE PUBLIC
17 RECORD IN A SORTABLE FORMAT.

18 (b) A CUSTODIAN IS NOT REQUIRED TO PRODUCE A PUBLIC RECORD
19 IN A SEARCHABLE OR SORTABLE FORMAT IN ACCORDANCE WITH
20 SUBSECTION (1)(a) OF THIS SECTION IF:

21 (I) PRODUCING THE RECORD IN THE REQUESTED FORMAT WOULD
22 VIOLATE THE TERMS OF ANY COPYRIGHT OR LICENSING AGREEMENT
23 BETWEEN THE CUSTODIAN AND A THIRD PARTY OR RESULT IN THE RELEASE

1 OF A THIRD PARTY'S PROPRIETARY INFORMATION; OR
2 (II) AFTER MAKING REASONABLE INQUIRIES, IT IS NOT
3 TECHNOLOGICALLY OR PRACTICALLY FEASIBLE TO PERMANENTLY REMOVE
4 INFORMATION THAT THE CUSTODIAN IS REQUIRED OR ALLOWED TO
5 WITHHOLD WITHIN THE REQUESTED FORMAT, IT IS NOT TECHNOLOGICALLY
6 OR PRACTICALLY FEASIBLE TO PROVIDE A COPY OF THE RECORD IN A
7 SEARCHABLE OR SORTABLE FORMAT, OR IF THE CUSTODIAN WOULD BE
8 REQUIRED TO PURCHASE SOFTWARE OR CREATE ADDITIONAL
9 PROGRAMMING OR FUNCTIONALITY IN ITS EXISTING SOFTWARE TO REMOVE
10 THE INFORMATION.

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

22 (d) ALTERING AN EXISTING PUBLIC RECORD, OR EXCISING FIELDS
23 OF INFORMATION PURSUANT TO THIS SUBSECTION (3.5) TO REMOVE
24 INFORMATION THAT THE CUSTODIAN IS EITHER REQUIRED OR PERMITTED
25 TO WITHHOLD, DOES NOT CONSTITUTE THE CREATION OF A NEW PUBLIC
26 RECORD.

27 (e) NOTHING IN THIS SUBSECTION (3.5) RELIEVES OR MITIGATES
28 THE OBLIGATIONS OF A CUSTODIAN TO PRODUCE A PUBLIC RECORD IN A
29 FORMAT ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES IN ACCORDANCE
30 WITH TITLE II OF THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF
31 1990", 42 U.S.C. SEC. 12131 ET. SEQ., AND OTHER FEDERAL OR STATE
32 LAWS.

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

35 **24-72-204. Allowance or denial of inspection - grounds -**
36 **procedure - appeal - definitions.** (5) Except as provided in subsection
37 (5.5) of this section, any person denied the right to inspect any record
38 covered by this part 2 OR WHO ALLEGES A VIOLATION OF SECTION
39 24-72-203 (3.5) may apply to the district court of the district wherein the
40 record is found for an order directing the custodian of such record to
41 show cause why the custodian should not permit the inspection of such

1 record; except that, at least three business days prior to filing an
2 application with the district court, the person who has been denied the
3 right to inspect the record shall file a written notice with the custodian
4 who has denied the right to inspect the record informing said custodian
5 that the person intends to file an application with the district court.
6 Hearing on such application shall be held at the earliest practical time.
7 Unless the court finds that the denial of the right of inspection was
8 proper, it shall order the custodian to permit such inspection and shall
9 award court costs and reasonable attorney fees to the prevailing applicant
10 in an amount to be determined by the court; except that no court costs and
11 attorney fees shall be awarded to a person who has filed a lawsuit against
12 a state public body or local public body and who applies to the court for
13 an order pursuant to this subsection (5) for access to records of the state
14 public body or local public body being sued if the court finds that the
15 records being sought are related to the pending litigation and are
16 discoverable pursuant to chapter 4 of the Colorado rules of civil
17 procedure. In the event the court finds that the denial of the right of
18 inspection was proper, the court shall award court costs and reasonable
19 attorney fees to the custodian if the court finds that the action was
20 frivolous, vexatious, or groundless.

21 **SECTION 3.** In Colorado Revised Statutes, **repeal** 24-72-206 as
22 follows:

23 **24-72-206. Violation - penalty.** ~~Any person who willfully and~~
24 ~~knowingly violates the provisions of this part 2 is guilty of a misdemeanor~~
25 ~~and, upon conviction thereof, shall be punished by a fine of not more than~~
26 ~~one hundred dollars, or by imprisonment in the county jail for not more~~
27 ~~than ninety days, or by both such fine and imprisonment.~~

28 **SECTION 4. Act subject to petition - effective date.** Section 2
29 of this act takes effect upon passage and the remainder of this act takes
30 effect September 1, 2017; except that, if a referendum petition is filed
31 pursuant to section 1 (3) of article V of the state constitution against this
32 act or an item, section, or part of this act within the ninety-day period
33 after final adjournment of the general assembly, then the act, item,
34 section, or part will not take effect unless approved by the people at the
35 general election to be held in November 2018 and, in such case, will take
36 effect on the date of the official declaration of the vote thereon by the
37 governor."

38 Page 1 of the bill, strike lines 102 and 103 and substitute
39 "GOVERNMENTAL BODIES."."

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