

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. 17-0153.01 Bob Lackner x4350

SENATE BILL 17-040

SENATE SPONSORSHIP

Kefalas, Gardner

HOUSE SPONSORSHIP

Pabon,

Senate Committees

State, Veterans, & Military Affairs
Appropriations

House Committees

Finance
Appropriations

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

3 **SECTION 1.** In Colorado Revised Statutes, 24-72-202, **amend**
4 **(7); and add (1.4), (2.3), (6)(b)(XIV), (6.3), and (6.4) as follows:**

5 **24-72-202. Definitions.** As used in this part 2, unless the context
6 otherwise requires:

7 (1.4) "INFRASTRUCTURE SECURITY DATA" MEANS ANY RECORD THE
8 DISCLOSURE OF WHICH COULD ENDANGER PUBLIC SAFETY OR THE
9 OPERATION OF CRITICAL INFRASTRUCTURE. SUCH RECORDS INCLUDE
10 DETAILED DRAWINGS, SCHEMATIC DIAGRAMS, SPECIFICATIONS, SECURITY
11 CODES, VULNERABILITY ASSESSMENTS, PROTECTIVE MEASURES,
12 EMERGENCY RESPONSE PLANS, SYSTEM OPERATIONAL DATA, AND THE
13 EXACT PHYSICAL LOCATIONS OF HAZARDOUS MATERIALS. FOR PURPOSES
14 OF THIS SUBSECTION (1.4), "CRITICAL INFRASTRUCTURE" INCLUDES
15 BRIDGES, TUNNELS, DAMS, WATER TREATMENT SUPPLY AND DELIVERY
16 SYSTEMS, WASTEWATER COLLECTION AND TREATMENT SYSTEMS,

1 RAILWAYS, AIRPORTS, COMMUNICATIONS OR BROADBAND NETWORKS,
2 ELECTRIC GENERATION TRANSMISSION AND DISTRIBUTION SYSTEMS,
3 NATURAL GAS TRANSMISSION AND DISTRIBUTION SYSTEMS, AND PUBLIC
4 BUILDINGS.

5 (2.3) "NATIVE FORMAT" MEANS THE FORMAT IN WHICH A FILE OR
6 DATABASE CONFIGURATION OR SCHEMA WAS ORIGINALLY CREATED OR IS
7 STORED ON THE CUSTODIAN'S COMPUTER OR SERVER.

8

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 2.** 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 3.** 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 OR PRACTICALLY FEASIBLE TO
9 PERMANENTLY REMOVE INFORMATION THAT THE CUSTODIAN IS REQUIRED
10 OR ALLOWED TO WITHHOLD WITHIN THE REQUESTED FORMAT, OR THE
11 CUSTODIAN WOULD BE REQUIRED TO PURCHASE SOFTWARE OR CREATE
12 ADDITIONAL PROGRAMMING OR FUNCTIONALITY IN ITS EXISTING
13 SOFTWARE TO REMOVE 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 EITHER METADATA OR
26 THE CORRESPONDING METADATA OF AN INDIVIDUAL RECORD UNLESS THE
27 PARTICULAR METADATA IS SPECIFICALLY REQUESTED AND SUBJECT TO

1 DISCLOSURE.

2 (4) WHEN A CUSTODIAN PRODUCES RECORDS IN A SEARCHABLE OR
3 STRUCTURED FORMAT IN ACCORDANCE WITH SUBSECTION (1)(a) OF THIS
4 SECTION, THE CHOICE OF FORMAT IS IN THE SOLE DISCRETION OF THE
5 CUSTODIAN.

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

9 (6) IF THE CUSTODIAN BELIEVES A REQUEST TO PROVIDE RECORDS
10 IN A STRUCTURED DATA FORMAT WILL REQUIRE THE MAJORITY OF THE
11 INFORMATION CONTAINED IN THE REQUEST TO BE REMOVED FROM THE
12 RECORD EITHER BECAUSE SUCH INFORMATION IS NOT SUBJECT TO
13 DISCLOSURE OR THE RECORD REQUESTED IS SO LARGE THAT IT CREATES
14 LOGISTICAL PROBLEMS TO RESPOND TO THE REQUEST, THE CUSTODIAN
15 SHALL CONFER WITH THE REQUESTER TO DETERMINE IF THE REQUEST MAY
16 BE STRUCTURED IN A DIFFERENT WAY. COMPLIANCE WITH SECTION
17 24-72-203 (3) IS TOLLED DURING THE PERIOD IN WHICH THE PARTIES ARE
18 CONFERRING UNDER THIS SUBSECTION (6). THE CUSTODIAN MAY DEEM A
19 REQUEST WITHDRAWN IF THE REQUESTOR FAILS TO RESPOND TO THE
20 CUSTODIAN'S OFFER TO CONFER WITHIN THREE BUSINESS DAYS.

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

26 **SECTION 4.** In Colorado Revised Statutes, 24-72-204, **amend**
27 **(5); and add (1)(e), (2)(a)(X), (4.5), and (9) as follows:**

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

6 (e) SUCH INSPECTION SEEKS ACCESS TO INFRASTRUCTURE
7 SECURITY DATA.

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

11 (X) SOFTWARE PROGRAMS; NETWORK AND SYSTEMS
12 ARCHITECTURAL DESIGNS; SOURCE CODE; SOURCE DOCUMENTATION;
13 INFORMATION IN TANGIBLE OR INTANGIBLE FORM RELATING TO RELEASED
14 AND UNRELEASED SOFTWARE OR HARDWARE, DATABASE DESIGN
15 STRUCTURES, DATABASE SCHEMA AND ARCHITECTURE, SECURITY
16 STRUCTURES AND ARCHITECTURE, AND DATA STORED IN SUPPORT
17 STRUCTURES; AGENCY ORIGINAL DESIGN IDEAS; NONPUBLIC BUSINESS
18 POLICIES AND PRACTICES RELATING TO SOFTWARE DEVELOPMENT AND
19 USE; AND THE TERMS AND CONDITIONS OF ANY ACTUAL OR PROPOSED
20 LICENSE AGREEMENT OR OTHER AGREEMENT CONCERNING THE PRODUCTS
21 AND LICENSING NEGOTIATIONS.

22 ■ ■

23 (4.5) IF THE CUSTODIAN DENIES ACCESS TO ANY RECORD ON THE
24 GROUND THAT THE RECORD CONTAINS INFRASTRUCTURE SECURITY DATA,
25 THE CUSTODIAN SHALL FORTHWITH FURNISH THE APPLICANT WITH A
26 WRITTEN STATEMENT SPECIFYING WHY THE REQUESTED RECORD IS
27 INFRASTRUCTURE SECURITY DATA. AT THE SAME TIME, THE CUSTODIAN

1 SHALL ALSO PROVIDE COPIES OF THE WRITTEN STATEMENT TO THE
2 ATTORNEY GENERAL OF THE STATE AND ALSO TO THE DIVISION OF
3 HOMELAND SECURITY AND EMERGENCY MANAGEMENT WITHIN THE
4 DEPARTMENT OF PUBLIC SAFETY CREATED IN SECTION 24-33.5-1603 (1).
5 THE APPLICANT MAY APPLY TO THE STATE DISTRICT COURT FOR THE
6 JUDICIAL DISTRICT IN WHICH THE RECORD IS LOCATED FOR A
7 DETERMINATION THAT THE REQUESTED RECORD IS IN FACT A PUBLIC
8 RECORD IN ACCORDANCE WITH THIS PART 2 AND DOES NOT SATISFY THE
9 DEFINITION OF INFRASTRUCTURE SECURITY DATA SPECIFIED IN SECTION
10 24-72-202 (1.4). IN AN ACTION BROUGHT UNDER THIS SUBSECTION (4.5),
11 THE APPLICANT BEARS THE BURDEN OF PROOF.

12 (5) Except as provided in subsection (5.5) of this section, any
13 person denied the right to inspect any record covered by this part 2, OR
14 WHO ALLEGES A VIOLATION OF DIGITAL FORMAT PROVISIONS UNDER
15 SECTION 24-72-203.5 OR A VIOLATION OF RECORD TRANSMISSION
16 PROVISIONS SPECIFIED IN SECTION 24-72-205, may apply to the district
17 court of the district wherein the record is found for an order directing the
18 custodian of such record to show cause why the custodian should not
19 permit the inspection of such record; except that, at least three business
20 days prior to filing an application with the district court, the person who
21 has been denied the right to inspect the record shall file a written notice
22 with the custodian who has denied the right to inspect the record
23 informing said custodian that the person intends to file an application
24 with the district court. Hearing on such application shall be held at the
25 earliest practical time. Unless the court finds that the denial of the right
26 of inspection was proper, it shall order the custodian to permit such
27 inspection and shall award court costs and reasonable attorney fees to the

1 prevailing applicant in an amount to be determined by the court; except
2 that no court costs and attorney fees shall be awarded to a person who has
3 filed a lawsuit against a state public body or local public body and who
4 applies to the court for an order pursuant to this subsection (5) for access
5 to records of the state public body or local public body being sued if the
6 court finds that the records being sought are related to the pending
7 litigation and are discoverable pursuant to chapter 4 of the Colorado rules
8 of civil procedure. In the event the court finds that the denial of the right
9 of inspection was proper, the court shall award court costs and reasonable
10 attorney fees to the custodian if the court finds that the action was
11 frivolous, vexatious, or groundless. IN ANY CASE ALLEGING A VIOLATION
12 OF DIGITAL FORMAT PROVISIONS, THE ATTORNEY FEE PROVISIONS
13 SPECIFIED IN SECTION 24-72-203.5 (2) MUST APPLY.

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

20 **SECTION 5.** In Colorado Revised Statutes, **amend** 24-72-205 as
21 follows:

22 **24-72-205. Copy, printout, or photograph of a public record**
23 **- imposition of research and retrieval fee.** (1) (a) In all cases in which
24 a person has the right to inspect a public record, the person may request
25 a copy, printout, or photograph of the record. The custodian shall furnish
26 a copy, printout, or photograph and may charge a fee determined in
27 accordance with ~~subsection (5)~~ of this section; except that, when the

1 custodian is the secretary of state, fees shall be determined and collected
2 pursuant to section 24-21-104 (3), and when the custodian is the
3 executive director of the department of personnel, fees shall be
4 determined and collected pursuant to section 24-80-102 (10). Where the
5 fee for a certified copy or other copy, printout, or photograph of a record
6 is specifically prescribed by law, the specific fee shall apply.

7 (b) Upon request for records transmission by a person seeking a
8 copy of any public record, the custodian shall transmit a copy of the
9 record by United States mail, other delivery service, facsimile, or
10 electronic mail. No transmission fees may be charged to the record
11 requester for transmitting public records via electronic mail. Within the
12 period specified in section 24-72-203 (3)(a), the custodian shall notify the
13 record requester that a copy of the record is available but will only be sent
14 to the requester once the custodian either receives payment or makes
15 arrangements for receiving payment for all costs associated with records
16 transmission and for all other fees lawfully allowed, unless recovery of
17 all or any portion of such costs or fees has been waived by the custodian.
18 Upon either receiving such payment or making arrangements to receive
19 such payment at a later date, the custodian shall send the record to the
20 requester as soon as practicable but no more than three business days after
21 receipt of, or making arrangements to receive, such payment.

22 (2) If the custodian does not have facilities for making a copy,
23 printout, or photograph of a record that a person has the right to inspect,
24 the person shall be granted access to the record for the purpose of making
25 a copy, printout, or photograph. The copy, printout, or photograph shall
26 be made while the record is in the possession, custody, and control of the
27 custodian thereof and shall be subject to the supervision of the custodian.

1 When practical, the copy, printout, or photograph shall be made in the
2 place where the record is kept, but if it is impractical to do so, the
3 custodian may allow arrangements to be made for the copy, printout, or
4 photograph to be made at other facilities. If other facilities are necessary,
5 the cost of providing them shall be paid by the person desiring a copy,
6 printout, or photograph of the record. The custodian may establish a
7 reasonable schedule of times for making a copy, printout, or photograph.
8 ~~and may charge the same fee for the services rendered in supervising the~~
9 ~~copying, printing out, or photographing as the custodian may charge for~~
10 ~~furnishing a copy, printout, or photograph under subsection (5) of this~~
11 ~~section.~~

12 (3) If, in response to a specific request, the state or any of its
13 agencies, institutions, or political subdivisions has performed a
14 ~~manipulation of data~~ PROGRAMMING, CODING, OR CUSTOM SEARCH
15 QUERIES SO AS TO CONVERT A RECORD INTO A STRUCTURED DATA OR
16 SEARCHABLE FORMAT so as to generate a record in a form not used by the
17 state or by said agency, institution, or political subdivision, a reasonable
18 fee may be charged to the person making the request. Such fee shall not
19 exceed the actual cost of ~~manipulating the said data~~ PROGRAMMING,
20 CODING, OR CUSTOM SEARCH QUERIES and generating the said record in
21 accordance with the request. Persons making subsequent requests for the
22 same or similar records may be charged a fee not in excess of the original
23 fee.

24 (4) ~~If the public record is a result of computer output other than~~
25 ~~word processing, the fee for a copy, printout, or photograph thereof may~~
26 ~~be based on recovery of the actual incremental costs of providing the~~
27 ~~electronic services and products together with a reasonable portion of the~~

1 ~~costs associated with building and maintaining the information system.~~
2 ~~Such fee may be reduced or waived by the custodian if the electronic~~
3 ~~services and products are to be used for a public purpose, including public~~
4 ~~agency program support, nonprofit activities, journalism, and academic~~
5 ~~research. Fee reductions and waivers shall be uniformly applied among~~
6 ~~persons who are similarly situated~~ IF A CUSTODIAN PERFORMS
7 PROGRAMMING, CODING, OR CUSTOM SEARCH QUERIES TO CREATE A PUBLIC
8 RECORD, THE FEE FOR A PAPER OR ELECTRONIC COPY OF THAT RECORD MAY
9 BE BASED ON RECOVERY OF THE ACTUAL OR INCREMENTAL COSTS OF
10 PERFORMING THE PROGRAMMING, CODING, OR CUSTOM SEARCH QUERIES,
11 TOGETHER WITH A REASONABLE PORTION OF THE COSTS ASSOCIATED WITH
12 BUILDING AND MAINTAINING THE INFORMATION SYSTEMS.

13 (5) (a) A custodian may charge a fee not to exceed twenty-five
14 cents per standard page for a PAPER copy of a public record or a fee not to
15 exceed the actual cost of providing a copy, printout, or photograph of a
16 public record in a format other than a standard page.

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

22 (6) (a) A custodian may impose a fee in response to a request for
23 the research and retrieval of public records only if the custodian has, prior
24 to the date of receiving the request, either posted on the custodian's
25 website or otherwise published a written policy that specifies the
26 applicable conditions concerning the research and retrieval of public
27 records by the custodian, including the amount of any current fee. Under

1 any such policy, the custodian shall not impose a charge for the first hour
2 of time expended in connection with the research and retrieval of public
3 records. After the first hour of time has been expended, the custodian may
4 charge a fee for the research and retrieval of public records that shall not
5 exceed thirty dollars per hour.

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

12 ~~(b)~~ (c) On July 1, 2019, and by July 1 of every five-year period
13 thereafter, the director of research of the legislative council appointed
14 pursuant to section 2-3-304 (1) C.R.S., shall adjust the maximum hourly
15 fee specified in ~~paragraph (a) of this subsection (6)~~ SUBSECTION (6)(a) OF
16 THIS SECTION in accordance with the percentage change over the period
17 in the United States department of labor, bureau of labor statistics,
18 consumer price index for Denver-Boulder-Greeley, all items, all urban
19 consumers, or its successor index. The director of research shall post the
20 adjusted maximum hourly fee on the website of the general assembly.

21 **SECTION 6.** 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.~~

1 **SECTION 7. Appropriation.** (1) For the 2017-18 state fiscal
2 year, \$50,810 is appropriated to the judicial department for use by the
3 office of the state public defender. This appropriation is from the general
4 fund. To implement this act, the office may use this appropriation as
5 follows:

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

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

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

10 (2) For the 2017-18 state fiscal year, \$855 is appropriated to the
11 department of law. This appropriation is from reappropriated funds
12 received from the office of the state public defender in the judicial
13 department under subsection (1)(c) of this section. To implement this act,
14 the department of law may use this appropriation to provide legal services
15 for the office of the state public defender in the judicial department.

16 **SECTION 8. Act subject to petition - effective date.** This act
17 takes effect at 12:01 a.m. on the day following the expiration of the
18 ninety-day period after final adjournment of the general assembly (August
19 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
20 referendum petition is filed pursuant to section 1 (3) of article V of the
21 state constitution against this act or an item, section, or part of this act
22 within such period, then the act, item, section, or part will not take effect
23 unless approved by the people at the general election to be held in
24 November 2018 and, in such case, will take effect on the date of the
25 official declaration of the vote thereon by the governor.