

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Appropriations.

SB17-040 be amended as follows:

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  
24 OF A THIRD PARTY'S PROPRIETARY INFORMATION; OR

25 (II) AFTER MAKING REASONABLE INQUIRIES, IT IS NOT  
26 TECHNOLOGICALLY OR PRACTICALLY FEASIBLE TO PERMANENTLY REMOVE  
27 INFORMATION THAT THE CUSTODIAN IS REQUIRED OR ALLOWED TO  
28 WITHHOLD WITHIN THE REQUESTED FORMAT, IT IS NOT TECHNOLOGICALLY  
29 OR PRACTICALLY FEASIBLE TO PROVIDE A COPY OF THE RECORD IN A  
30 SEARCHABLE OR SORTABLE FORMAT, OR IF THE CUSTODIAN WOULD BE  
31 REQUIRED TO PURCHASE SOFTWARE OR CREATE ADDITIONAL  
32 PROGRAMMING OR FUNCTIONALITY IN ITS EXISTING SOFTWARE TO REMOVE  
33 THE INFORMATION.

34 (c) IF A CUSTODIAN IS NOT ABLE TO COMPLY WITH A REQUEST TO  
35 PRODUCE A PUBLIC RECORD THAT IS SUBJECT TO DISCLOSURE IN A  
36 REQUESTED FORMAT SPECIFIED IN SUBSECTION (1)(a) OF THIS SECTION, THE  
37 CUSTODIAN SHALL PRODUCE THE RECORD IN AN ALTERNATE FORMAT OR

1 ISSUE A DENIAL UNDER SECTION 24-72-204 AND SHALL PROVIDE A  
2 WRITTEN DECLARATION ATTESTING TO THE REASONS THE CUSTODIAN IS  
3 NOT ABLE TO PRODUCE THE RECORD IN THE REQUESTED FORMAT. IF A  
4 COURT SUBSEQUENTLY RULES THE CUSTODIAN SHOULD HAVE PROVIDED  
5 THE RECORD IN THE REQUESTED FORMAT, ATTORNEY FEES MAY BE  
6 AWARDED ONLY IF THE CUSTODIAN'S ACTION WAS ARBITRARY OR  
7 CAPRICIOUS.

8 (d) ALTERING AN EXISTING PUBLIC RECORD, OR EXCISING FIELDS  
9 OF INFORMATION PURSUANT TO THIS SUBSECTION (3.5) TO REMOVE  
10 INFORMATION THAT THE CUSTODIAN IS EITHER REQUIRED OR PERMITTED  
11 TO WITHHOLD, DOES NOT CONSTITUTE THE CREATION OF A NEW PUBLIC  
12 RECORD.

13 (e) NOTHING IN THIS SUBSECTION (3.5) RELIEVES OR MITIGATES  
14 THE OBLIGATIONS OF A CUSTODIAN TO PRODUCE A PUBLIC RECORD IN A  
15 FORMAT ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES IN ACCORDANCE  
16 WITH TITLE II OF THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF  
17 1990", 42 U.S.C. SEC. 12131 ET. SEQ., AND OTHER FEDERAL OR STATE  
18 LAWS.

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

21 **24-72-204. Allowance or denial of inspection - grounds -**  
22 **procedure - appeal - definitions.** (5) Except as provided in subsection  
23 (5.5) of this section, any person denied the right to inspect any record  
24 covered by this part 2 OR WHO ALLEGES A VIOLATION OF SECTION  
25 24-72-203 (3.5) may apply to the district court of the district wherein the  
26 record is found for an order directing the custodian of such record to  
27 show cause why the custodian should not permit the inspection of such  
28 record; except that, at least three business days prior to filing an  
29 application with the district court, the person who has been denied the  
30 right to inspect the record shall file a written notice with the custodian  
31 who has denied the right to inspect the record informing said custodian  
32 that the person intends to file an application with the district court.  
33 Hearing on such application shall be held at the earliest practical time.  
34 Unless the court finds that the denial of the right of inspection was  
35 proper, it shall order the custodian to permit such inspection and shall  
36 award court costs and reasonable attorney fees to the prevailing applicant  
37 in an amount to be determined by the court; except that no court costs and  
38 attorney fees shall be awarded to a person who has filed a lawsuit against  
39 a state public body or local public body and who applies to the court for  
40 an order pursuant to this subsection (5) for access to records of the state  
41 public body or local public body being sued if the court finds that the

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

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

9         **24-72-206. Violation - penalty.** ~~Any person who willfully and~~  
10 ~~knowingly violates the provisions of this part 2 is guilty of a misdemeanor~~  
11 ~~and, upon conviction thereof, shall be punished by a fine of not more than~~  
12 ~~one hundred dollars, or by imprisonment in the county jail for not more~~  
13 ~~than ninety days, or by both such fine and imprisonment.~~

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

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

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