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LLS NO. 23-0416.01 Nicole Myers x4326

SENATE BILL

SENATE SPONSORSHIP

Hansen,

HOUSE SPONSORSHIP

Snyder,

BILL TOPIC: Access To Government Records

A BILL FOR AN ACT

101 **CONCERNING PUBLIC ACCESS TO GOVERNMENT RECORDS.**

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>.)

The bill makes changes to the "Colorado Open Records Act" (CORA) and to record retention requirements for members of the general assembly and the executive directors and deputy directors of state agencies.

Definitions. The bill modifies the definition of "public records" (records) in CORA to clarify that writings made, maintained, or kept by the state, including any office of the state, are records. The bill also changes the definition of "electronic mail" to "electronic communication"

*Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words indicate deletions from existing law.*

to encompass all forms of electronic communication. In addition, the bill adds new definitions of "news media" and "commercial purpose" as described below.

Time frame for inspection. Currently, when records are requested through CORA, the custodian of the records (custodian) is required to make the records available for inspection within 3 working days of the request. The bill modifies the number of days a custodian has to make the records available as follows:

- If the requester is a member of the news media, within 3 working days of the request;
- If the requester is not a member of the news media and does not intend to use the records for a commercial purpose, within 7 working days of the request; and
- If the requester is from outside the state and not a member of the news media or if the requester intends to use the records for a commercial purpose, within 14 working days of the request.

Extended time frame for inspection. CORA currently allows a custodian to extend the 3-day response period to 7 days if the custodian makes a written finding that certain extenuating circumstances exist. The bill modifies the number of days a custodian has to make the records available with an extended response period as follows:

- If the requester is a member of the news media, within 7 working days of the request;
- If the requester is not a member of the news media and does not intend to use the records for a commercial purpose, within 14 working days of the request; and
- If the requester is from outside the state and not a member of the news media or if the requester intends to use the records for a commercial purpose, within 28 working days of the request.

"News media" is defined as either a broadcast entity licensed by the federal communications commission that satisfies specified criteria or a news publication that has published one or more regular publications in each of the 4 calendar quarters preceding a request that satisfies specified criteria. "Commercial purpose" is defined as the use of any part of a record or information derived from a record for the purpose of soliciting business for pecuniary gain.

Format of records for inspection. Current law specifies how a custodian is required to provide a record for inspection if the record is available in a digital format that is sortable, searchable, or both. The bill specifies that if a record is available and can be transmitted in digital format, the custodian is required to transmit the record by electronic communication unless otherwise requested by the requester. In addition, the bill prohibits a custodian from converting a digital record into a

non-searchable or non-sortable format prior to transmission.

Records subject to inspection. CORA currently allows a custodian to deny a requester's right to inspect certain records on the ground that disclosure of the record would be contrary to the public interest. The bill includes in this category the telephone number or home address that a person provides to an elected official for the purpose of future communication with the elected official.

The bill specifies that if an elected official is the subject of a government-authorized investigation into the elected official's alleged sexual harassment in the workplace, the final report of the investigation is a public record; except that the identity of any accuser and any potentially identifiable characteristics of any accuser must be redacted unless the identity of all accusers is already known to the public.

Transmission and per-page fees for records. Currently, a custodian may transmit a record to a requester in one of several ways and may charge the requester for the costs associated with transmitting the record; except that the custodian may not charge a fee if the record is transmitted via electronic communication. In addition, a custodian may currently charge a per-page fee for providing copies of a record. The bill specifies that the custodian may not charge a per-page fee if the records are provided in a digital or electronic format.

Research and retrieval fees for records. In addition to the transmission and per-page fees for records, a custodian may currently charge an hourly fee for the research and retrieval of records if the custodian has a written policy that specifies the conditions for the fee (policy). Currently, the custodian is prohibited from imposing a charge for the first hour of time expended in connection with the research and retrieval of the records. The bill specifies that the first hour of time expended in connection with the research and retrieval of records is required to be free only if the requester is a member of the news media or if the requester is not a member of the news media but does not intend to use the records for a commercial purpose.

The bill specifies that after the first hour of time is expended in connection with the research and retrieval of records, the custodian may charge an hourly fee as follows:

- For a request for records that is made by a member of the news media, the hourly fee is limited to 1/2 of the hourly fee imposed pursuant to the custodian's policy;
- For a request for records that is made by a requester who is not a member of the news media and who does not intend to use the records for a commercial purpose, the hourly fee is as specified in the custodian's policy; and
- For a requester who is from outside the state and not a member of the news media or for a requester who intends to use the records for a commercial purpose, the hourly fee

is as specified in the custodian's policy; except that the hourly fee may exceed such amount as necessary for the custodian to recover all of its costs associated with responding to all requests for public records.

The hourly fee specified in the custodian's policy cannot exceed \$30.58, adjusted for inflation every 5 years, which is the maximum hourly fee currently allowed by CORA.

The bill requires a custodian to presume that a request for public records is made by a requester who is from outside the state and is not a member of the news media or by a requester who intends to use the records for a commercial purpose unless the requester submits with the request proof that the requester is a member of the news media or an affidavit stating that the requester does not intend to use the records for a commercial purpose and is from the state.

Electronic payments. The bill requires a custodian to allow records requesters to pay any fee or deposit associated with the request via a credit card or electronic payment if the custodian allows members of the public to pay for any other product or service provided by the custodian with a credit card or electronic payment.

Records retention requirements. The bill requires all electronic communications sent to or received by an officer or employee of a state agency, the contents of which include any discussion of the public business of the state agency and are relevant to any proceeding in which the state agency is involved, to be retained for at least the length of the applicable proceeding. In addition, the bill requires each state agency to retain all electronic mail messages in its custody or control that may be responsive to a request for records pursuant to CORA until the request for records and any subsequent appeals are resolved.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-72-202, **amend**
3 (1), (1.1), (1.2), (1.3), (2), (6)(a)(I), and (7); and **add** (1.4) and (2.5) as
4 follows:

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

7 ~~(1) "Correspondence" means a communication that is sent to or~~
8 ~~received by one or more specifically identified individuals and that is or~~
9 ~~can be produced in written form, including, without limitation:~~

- 1 ~~(a) Communications sent via U.S. mail;~~
- 2 ~~(b) Communications sent via private courier;~~
- 3 ~~(c) Communications sent via electronic mail.~~

4 (1) (a) "COMMERCIAL PURPOSE" MEANS THE USE OF ANY PART OF
5 A PUBLIC RECORD OR INFORMATION DERIVED FROM A PUBLIC RECORD FOR
6 THE PURPOSE OF SOLICITING BUSINESS FOR PECUNIARY GAIN.

7 (1.1) "CORRESPONDENCE" MEANS A COMMUNICATION THAT IS
8 SENT TO OR RECEIVED BY ONE OR MORE SPECIFICALLY IDENTIFIED
9 INDIVIDUALS AND THAT IS OR CAN BE PRODUCED IN WRITTEN FORM,
10 INCLUDING, WITHOUT LIMITATION, COMMUNICATIONS SENT VIA:

- 11 (a) U.S. MAIL;
- 12 (b) PRIVATE COURIER; OR
- 13 (c) ELECTRONIC COMMUNICATION.

14 ~~(1.1)~~ (1.2) "Custodian" means and includes the official custodian
15 or any authorized person having personal custody and control of the
16 public records in question.

17 ~~(1.2)~~ (1.3) "Electronic ~~mail~~ COMMUNICATION" means an electronic
18 message that is transmitted between two or more computers or electronic
19 terminals, whether or not the message is converted to hard copy format
20 after receipt and whether or not the message is viewed upon transmission
21 or stored for later retrieval. "Electronic ~~mail~~ COMMUNICATION" includes
22 electronic ~~messages~~ COMMUNICATIONS that are transmitted through a
23 local, regional, or global computer network.

24 ~~(1.3)~~ (1.4) "Executive position" means any nonelective
25 employment position with a state agency, institution, or political
26 subdivision, except employment positions in the state personnel system
27 or employment positions in a classified system or civil service system of

1 an institution or political subdivision.

2 (2) (a) ~~"Official custodian" means and includes any officer or~~
3 ~~employee of the state, of any agency, institution, or political subdivision~~
4 ~~of the state, of any institutionally related foundation, of any institutionally~~
5 ~~related health-care foundation, of any institutionally related real estate~~
6 ~~foundation, or of any local government-financed entity, who is~~
7 ~~responsible for the maintenance, care, and keeping of public records,~~
8 ~~regardless of whether the records are in his or her actual personal custody~~
9 ~~and control.~~ "NEWS MEDIA" MEANS AN ENTITY THAT IS LOCATED IN OR
10 OUTSIDE THE STATE THAT:

11 (I) (A) IS A BROADCAST ENTITY THAT IS LICENSED BY THE FEDERAL
12 COMMUNICATIONS COMMISSION; OR

13 (B) IS A NEWS PUBLICATION THAT HAS PUBLISHED ONE OR MORE
14 REGULAR PUBLICATIONS IN EACH OF THE FOUR CALENDAR QUARTERS
15 PRECEDING THE REQUEST AND CONTINUES TO PUBLISH IN PRINT OR DIGITAL
16 FORMAT;

17 (II) PRIMARILY SERVES THE NEEDS OF THE PUBLIC BY PROVIDING
18 NEWS INFORMATION;

19 (III) HAS NEWS GATHERING ENTITIES OR PROGRAMS THAT
20 PRIMARILY HAVE CONTENT DERIVED FROM PRIMARY SOURCES RELATING
21 TO NEWS AND CURRENT EVENTS;

22 (IV) EMPLOYS AT LEAST ONE FULL-TIME JOURNALIST FOR THIRTY
23 HOURS PER WEEK OR MORE WHO REGULARLY GATHERS, COLLECTS,
24 PHOTOGRAPHS, RECORDS, WRITES, OR REPORTS NEWS OR INFORMATION
25 THAT CONCERNS EVENTS OR OTHER MATTERS OF LOCAL PUBLIC INTEREST
26 AND IS COVERED BY THE PROVISIONS OF SECTION 13-90-119;

27 (V) IS COVERED BY MEDIA LIABILITY INSURANCE; AND

1 (VI) DISCLOSES ITS OWNERSHIP TO THE PUBLIC.

2 (b) "NEWS MEDIA" DOES NOT INCLUDE ANY ENTITY THAT IS:

3 (I) DESCRIBED IN SECTION 501 (c)(4) OF THE FEDERAL "INTERNAL
4 REVENUE CODE OF 1986", AS AMENDED, AND EXEMPT FROM TAXATION
5 UNDER SECTION 501 (1) OF SUCH CODE;

6 (II) DESCRIBED IN SECTION 501 (c)(6) OF THE FEDERAL "INTERNAL
7 REVENUE CODE OF 1986", AS AMENDED, AND EXEMPT FROM TAXATION
8 UNDER SECTION 501 (1) OF SUCH CODE;

9 (III) DESCRIBED IN SECTION 527 OF THE FEDERAL "INTERNAL
10 REVENUE CODE OF 1986", AS AMENDED; OR

11 (IV) OWNED BY, CONTROLLED BY, OR RECEIVING OVER FIFTY
12 PERCENT OF ITS REVENUE FROM ONE OR MORE ORGANIZATIONS DESCRIBED
13 IN THIS SUBSECTION (2)(b).

14 (2.5) "OFFICIAL CUSTODIAN" MEANS AND INCLUDES ANY OFFICER
15 OR EMPLOYEE OF THE STATE, OF ANY OFFICE, AGENCY, INSTITUTION, OR
16 POLITICAL SUBDIVISION OF THE STATE, OF ANY INSTITUTIONALLY RELATED
17 FOUNDATION, OF ANY INSTITUTIONALLY RELATED HEALTH-CARE
18 FOUNDATION, OF ANY INSTITUTIONALLY RELATED REAL ESTATE
19 FOUNDATION, OR OF ANY LOCAL GOVERNMENT-FINANCED ENTITY, WHO IS
20 RESPONSIBLE FOR THE MAINTENANCE, CARE, AND KEEPING OF PUBLIC
21 RECORDS, REGARDLESS OF WHETHER THE RECORDS ARE IN THE OFFICER'S
22 OR EMPLOYEE'S ACTUAL PERSONAL CUSTODY AND CONTROL.

23 (6) (a) (I) "Public records" means and includes all writings made,
24 maintained, or kept by the state; any OFFICE, agency, OR institution OF THE
25 STATE; a nonprofit corporation incorporated pursuant to section 23-5-121
26 (2); ~~C.R.S.~~; or a political subdivision of the state; or that are described in
27 section 29-1-902 ~~C.R.S.~~, and held by any local-government-financed

1 entity for use in the exercise of functions required or authorized by law
2 or administrative rule or involving the receipt or expenditure of public
3 funds.

4 (7) "Writings" means and includes all books, papers, maps,
5 photographs, cards, tapes, recordings, or other documentary materials,
6 regardless of physical form or characteristics. "Writings" includes
7 digitally stored data, including without limitation electronic ~~mail~~
8 ~~messages~~ COMMUNICATIONS, but does not include computer software.

9 **SECTION 2.** In Colorado Revised Statutes, 24-72-203, **amend**
10 (3), (3.5)(a)(II), (3.5)(a)(III), (3.5)(b) introductory portion, and
11 (3.5)(b)(II); and **add** (3.5)(a)(IV) and (3.5)(a)(V) as follows:

12 **24-72-203. Public records open to inspection.** (3) (a) If the
13 public records requested are in the custody and control of the person to
14 whom application is made but are in active use, in storage, or otherwise
15 not readily available at the time an applicant asks to examine them, the
16 custodian shall forthwith notify the applicant of this fact, in writing if
17 requested by the applicant. If requested by the applicant, the custodian
18 shall set a date and hour at which time the records will be available for
19 inspection.

20 (b) The date and hour set for the inspection of records not readily
21 available at the time of the request ~~shall~~ **MUST** be within a reasonable time
22 after the request.

23 (c) As used in this subsection (3), a "reasonable time" ~~shall be~~
24 ~~presumed to be three working days, or less~~ **MEANS:**

25 (I) FOR A REQUEST THAT IS MADE BY A REQUESTER WHO IS A
26 MEMBER OF THE NEWS MEDIA, THREE OR FEWER WORKING DAYS;

27 (II) FOR A REQUEST THAT IS MADE BY A REQUESTER WHO IS NOT A

1 MEMBER OF THE NEWS MEDIA AND WHO DOES NOT INTEND TO USE THE
2 RECORDS FOR A COMMERCIAL PURPOSE, SEVEN OR FEWER WORKING DAYS;
3 AND

4 (III) FOR A REQUEST THAT IS MADE BY A REQUESTER WHO IS FROM
5 OUTSIDE THE STATE AND IS NOT A MEMBER OF THE NEWS MEDIA OR BY A
6 REQUESTER WHO INTENDS TO USE THE RECORDS FOR A COMMERCIAL
7 PURPOSE, FOURTEEN OR FEWER WORKING DAYS.

8 (d) ~~Such~~ THE PERIOD TO RESPOND SPECIFIED IN SUBSECTION (3)(c)
9 OF THIS SECTION MAY BE EXTENDED IF EXTENUATING CIRCUMSTANCES EXIST.
10 HOWEVER, ~~such~~ THE TOTAL PERIOD ~~of~~ TO RESPOND INCLUDING THE
11 EXTENSION ~~shall~~ MUST NOT EXCEED SEVEN WORKING DAYS FOR A REQUEST
12 THAT IS MADE BY A REQUESTER WHO IS MEMBER OF THE NEWS MEDIA,
13 FOURTEEN WORKING DAYS FOR A REQUEST THAT IS MADE BY A REQUESTER
14 WHO IS NOT A MEMBER OF THE NEWS MEDIA AND WHO DOES NOT INTEND
15 TO USE THE RECORDS FOR A COMMERCIAL PURPOSE, AND TWENTY-EIGHT
16 WORKING DAYS FOR A REQUEST THAT IS MADE BY A REQUESTER WHO IS
17 FROM OUTSIDE THE STATE AND IS NOT A MEMBER OF THE NEWS MEDIA OR
18 BY A REQUESTER WHO INTENDS TO USE THE RECORDS FOR A COMMERCIAL
19 PURPOSE. THE CUSTODIAN SHALL MAKE A FINDING THAT EXTENUATING
20 CIRCUMSTANCES EXIST ~~shall be made in writing by the custodian and shall be~~
21 ~~provided~~ TO THE PERSON MAKING THE REQUEST WITHIN THE THREE-DAY,
22 SEVEN-DAY, OR FOURTEEN-DAY PERIOD, AS APPLICABLE, AND SHALL
23 SPECIFY THE PARTICULAR FACTS THAT ESTABLISH THE BASIS FOR INVOKING
24 AN EXTENSION. Extenuating circumstances shall apply only when:

25 (I) A broadly stated request is made that encompasses all or
26 substantially all of a large category of records and the request is without
27 sufficient specificity to allow the custodian reasonably to prepare or

1 gather the records within the ~~three-day period~~ APPLICABLE PERIOD
2 SPECIFIED IN SUBSECTION (3)(c) OF THIS SECTION; or

3 (II) A broadly stated request is made that encompasses all or
4 substantially all of a large category of records and the agency is unable to
5 prepare or gather the records within the ~~three-day period~~ APPLICABLE
6 PERIOD SPECIFIED IN SUBSECTION (3)(c) OF THIS SECTION because:

7 (A) The agency needs to devote all or substantially all of its
8 resources to meeting an impending deadline or period of peak demand
9 that is either unique or not predicted to recur more frequently than once
10 a month; or

11 (B) In the case of the general assembly or its staff or service
12 agencies, the general assembly is in session; or

13 (III) A request involves such a large volume of records that the
14 custodian cannot reasonably prepare or gather the records within the
15 ~~three-day period~~ APPLICABLE PERIOD SPECIFIED IN SUBSECTION (3)(c) OF
16 THIS SECTION without substantially interfering with the custodian's
17 obligation to perform his or her other public service responsibilities.

18 ~~(c) (e) In no event can~~ Extenuating circumstances DO NOT apply
19 to a request that relates to a single, specifically identified document.

20 (3.5) (a) Except as otherwise required by subsection (3.5)(b) of
21 this section:

22 (II) If a public record is stored in a digital format that is
23 searchable but not sortable, the custodian shall provide a DIGITAL copy of
24 the public record in a searchable format UNLESS OTHERWISE REQUESTED
25 BY THE REQUESTER.

26 (III) If a public record is stored in a digital format that is sortable,
27 the custodian shall provide a DIGITAL copy of the public record in a

1 sortable format UNLESS OTHERWISE REQUESTED BY THE REQUESTER.

2 (IV) IF A PUBLIC RECORD IS AVAILABLE IN A DIGITAL FORMAT, THE
3 CUSTODIAN SHALL TRANSMIT THE RECORD IN THAT DIGITAL FORMAT BY
4 ELECTRONIC COMMUNICATION UNLESS OTHERWISE REQUESTED BY THE
5 REQUESTER.

6 (V) EXCEPT AS OTHERWISE REQUIRED BY SUBSECTION (3.5)(b) OF
7 THIS SECTION, A CUSTODIAN SHALL NOT CONVERT A DIGITAL PUBLIC
8 RECORD INTO A NON-SEARCHABLE OR NON-SORTABLE FORMAT BEFORE
9 TRANSMISSION.

10 (b) A custodian is not required to produce a DIGITAL public record
11 in a searchable or sortable format in accordance with subsection (3.5)(a)
12 of this section if:

13 (II) After making reasonable inquiries, it is not technologically or
14 practically feasible to permanently remove information that the custodian
15 is required or allowed to withhold within the requested format, it is not
16 technologically or practically feasible to provide a copy of the record in
17 a DIGITAL searchable or sortable format, or if the custodian would be
18 required to purchase software or create additional programming or
19 functionality in its existing software to remove the information.

20 **SECTION 3.** In Colorado Revised Statutes, 24-72-204, **amend**
21 (2)(a)(VII), (3)(a)(XI)(A), and (3)(a)(XI)(D); and **add** (9) as follows:

22 **24-72-204. Allowance or denial of inspection - grounds -**
23 **procedure - appeal - definitions - repeal.** (2) (a) The custodian may
24 deny the right of inspection of the following records, unless otherwise
25 provided by law, on the ground that disclosure to the applicant would be
26 contrary to the public interest:

27 (VII) Electronic ~~mail~~ COMMUNICATION addresses provided by a

1 person to an agency, institution, or political subdivision of the state for
2 the purposes of future electronic communications to the person from the
3 agency, institution, or political subdivision AND TELEPHONE NUMBERS OR
4 HOME ADDRESSES PROVIDED BY A PERSON TO AN ELECTED OFFICIAL FOR
5 THE PURPOSE OF FUTURE COMMUNICATION WITH THE ELECTED OFFICIAL;
6 and

7 (3) (a) The custodian shall deny the right of inspection of the
8 following records, unless otherwise provided by law; except that the
9 custodian shall make any of the following records, other than letters of
10 reference concerning employment, licensing, or issuance of permits,
11 available to the person in interest in accordance with this subsection (3):

12 (XI) (A) Except as provided in subsection (3)(a)(XI)(D) of this
13 section, records submitted by or on behalf of an applicant or candidate for
14 any employment position, including an applicant for an executive position
15 ~~as defined in section 24-72-202 (1.3)~~ who is not a finalist. For purposes
16 of this subsection (3)(a)(XI), "finalist" means an applicant or candidate
17 for an executive position as the chief executive officer of a state agency,
18 institution, or political subdivision or agency thereof who is named as a
19 finalist pursuant to section 24-6-402 (3.5).

20 (D) Notwithstanding subsection (3)(a)(XI)(A) of this section, a
21 custodian shall allow public inspection of the demographic data of a
22 candidate who was interviewed by the state public body, local public
23 body, or search committee for an executive position, ~~as defined in section~~
24 ~~24-72-202 (1.3)~~, but is not named as a finalist pursuant to subsection
25 24-6-402 (3.5). For purposes of this subsection (3)(a)(XI)(D),
26 "demographic data" means information on a candidate's race and gender
27 that has been legally requested and voluntarily provided on the

1 candidate's application and does not include the candidate's name or other
2 information.

3 (9) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (3)(a)(X)
4 OF THIS SECTION, IF AN ELECTED OFFICIAL IS THE SUBJECT OF A
5 GOVERNMENT-AUTHORIZED INVESTIGATION INTO THE ELECTED OFFICIAL'S
6 ALLEGED SEXUAL HARASSMENT IN THE WORKPLACE, THE FINAL REPORT OF
7 THE INVESTIGATION, INCLUDING THE CONCLUSIONS REGARDING THE
8 ALLEGATIONS, ARE A PUBLIC RECORD; EXCEPT THAT THE IDENTITY OF ANY
9 ACCUSER AND ANY JOB DESCRIPTION OR OTHER POTENTIALLY
10 IDENTIFIABLE CHARACTERISTICS OF ANY ACCUSER MUST BE REDACTED
11 UNLESS THE IDENTITY OF ALL ACCUSERS ASSOCIATED WITH THE
12 INVESTIGATION IS ALREADY KNOWN TO THE PUBLIC.

13 **SECTION 4.** In Colorado Revised Statutes, **amend** 24-72-204.5
14 as follows:

15 **24-72-204.5. Adoption of electronic communication policy.**

16 (1) On or before July 1, 1997, the state or any agency, institution, or
17 political subdivision thereof that operates or maintains an electronic ~~mail~~
18 communications system shall adopt a written policy on any monitoring of
19 electronic ~~mail~~ communications and the circumstances under which it will
20 be conducted.

21 (2) The policy shall include a statement that correspondence of the
22 employee in the form of electronic ~~mail~~ COMMUNICATION may be a public
23 record under the public records law and may be subject to public
24 inspection under section 24-72-203.

25 **SECTION 5.** In Colorado Revised Statutes, 24-72-205, **amend**
26 (1)(b), (5)(a), and (6); and **add** (7) and (8) as follows:

27 **24-72-205. Copy, printout, or photograph of a public record**

1 **- imposition of research and retrieval fee.** (1) (b) Upon request for
2 records transmission by a person seeking a copy of any public record, the
3 custodian shall transmit a copy of the record by United States mail, other
4 delivery service, facsimile, or electronic ~~mail~~ COMMUNICATION. No
5 transmission fees may be charged to the record requester for transmitting
6 public records via electronic ~~mail~~ COMMUNICATION. Within the
7 APPLICABLE period specified in ~~section 24-72-203 (3)(a)~~ SECTION
8 24-72-203 (3)(c), the custodian shall notify the record requester that a
9 copy of the record is available but will only be sent to the requester once
10 the custodian either receives payment or makes arrangements for
11 receiving payment for all costs associated with records transmission and
12 for all other fees lawfully allowed, unless recovery of all or any portion
13 of such costs or fees has been waived by the custodian. Upon either
14 receiving such payment or making arrangements to receive such payment
15 at a later date, the custodian shall send the record to the requester as soon
16 as practicable but no more than three business days after receipt of, or
17 making arrangements to receive, such payment.

18 (5) (a) A custodian may charge a fee not to exceed twenty-five
19 cents per standard page for a copy of a public record or a fee not to
20 exceed the actual cost of providing a copy, printout, or photograph of a
21 public record in a format other than a standard page; EXCEPT THAT A
22 CUSTODIAN SHALL NOT CHARGE A PER-PAGE FEE FOR PROVIDING RECORDS
23 IN A DIGITAL OR ELECTRONIC FORMAT.

24 (6) (a) A custodian may impose a fee in response to a request for
25 the research and retrieval of public records only if the custodian has, prior
26 to the date of receiving the request, either posted on the custodian's
27 website or otherwise published a written policy that specifies the

1 applicable conditions concerning the research and retrieval of public
2 records by the custodian, including the amount of any current fee. Under
3 any such policy, the custodian shall not impose a charge for the first hour
4 of time expended in connection with the research and retrieval of public
5 records WHEN THE REQUEST IS MADE BY A REQUESTER WHO IS A MEMBER
6 OF THE NEWS MEDIA OR BY A REQUESTER WHO IS NOT A MEMBER OF THE
7 NEWS MEDIA AND WHO DOES NOT INTEND TO USE THE RECORDS FOR A
8 COMMERCIAL PURPOSE. IF THE REQUEST IS MADE BY A REQUESTER WHO IS
9 FROM OUTSIDE THE STATE AND IS NOT A MEMBER OF THE NEWS MEDIA OR
10 BY A REQUESTER WHO INTENDS TO USE THE RECORDS FOR A COMMERCIAL
11 PURPOSE, THE CUSTODIAN MAY IMPOSE A CHARGE FOR THE FIRST HOUR OF
12 TIME EXPENDED IN CONNECTION WITH THE RESEARCH AND RETRIEVAL OF
13 PUBLIC RECORDS. After the first hour of time has been expended, the
14 custodian may charge a fee for the research and retrieval of public records
15 ~~that shall not exceed thirty dollars per hour.~~ AS FOLLOWS:

16 (I) FOR A REQUEST THAT IS MADE BY A REQUESTER WHO IS A
17 MEMBER OF THE NEWS MEDIA, THE HOURLY SEARCH AND RETRIEVAL FEE
18 MUST NOT EXCEED ONE-HALF OF THE HOURLY FEE THAT THE CUSTODIAN
19 CHARGES FOR A REQUEST MADE PURSUANT TO SUBSECTION (6)(a)(II) OF
20 THIS SECTION;

21 (II) FOR A REQUEST THAT IS MADE BY A REQUESTER WHO IS NOT A
22 MEMBER OF THE NEWS MEDIA AND WHO DOES NOT INTEND TO USE THE
23 RECORDS FOR A COMMERCIAL PURPOSE, THE SEARCH AND RETRIEVAL FEE
24 MUST NOT EXCEED THIRTY-THREE DOLLARS AND FIFTY-EIGHT CENTS PER
25 HOUR, AS ADJUSTED PURSUANT TO SUBSECTION (6)(b) OF THIS SECTION;
26 AND

27 (III) FOR A REQUESTER WHO IS FROM OUTSIDE THE STATE AND NOT

1 A MEMBER OF THE NEWS MEDIA OR FOR A REQUESTER WHO INTENDS TO
2 USE THE RECORDS FOR A COMMERCIAL PURPOSE, THE SEARCH AND
3 RETRIEVAL FEE IS THE SAME AS THE HOURLY FEE THAT THE CUSTODIAN
4 CHARGES FOR A REQUEST MADE PURSUANT TO SUBSECTION (6)(a)(II) OF
5 THIS SECTION; EXCEPT THAT THE HOURLY FEE MAY EXCEED SUCH AMOUNT
6 AS NECESSARY FOR THE CUSTODIAN TO RECOVER ALL OF ITS COSTS
7 ASSOCIATED WITH RESPONDING TO ALL REQUESTS FOR PUBLIC RECORDS,
8 INCLUDING RESPONSES FOR WHICH THE CUSTODIAN IS NOT AUTHORIZED TO
9 RECOVER THE FULL RESEARCH AND RETRIEVAL FEE PURSUANT TO
10 SUBSECTION (6)(a)(I) OF THIS SECTION.

11 (b) On ~~July 1, 2019~~ JULY 1, 2024, and by July 1 of every five-year
12 period thereafter, the director of research of the legislative council
13 appointed pursuant to section 2-3-304 (1) shall adjust the maximum
14 hourly fee specified in ~~subsection (6)(a)~~ SUBSECTION (6)(a)(II) of this
15 section in accordance with the percentage change over the period in the
16 United States department of labor, bureau of labor statistics, consumer
17 price index for Denver-Aurora-Lakewood for all items and all urban
18 consumers, or its successor index. The director of research shall post the
19 adjusted maximum hourly fee on the website of the general assembly.

20 (c) ANY REQUESTER MAY PETITION THE CUSTODIAN TO HAVE THE
21 FEES OR CHARGES IMPOSED PURSUANT TO THIS SUBSECTION (6) WAIVED AT
22 THE SOLE DISCRETION OF THE CUSTODIAN.

23 (7) A CUSTODIAN SHALL PRESUME THAT A REQUEST FOR PUBLIC
24 RECORDS IS MADE BY EITHER A REQUESTER WHO IS FROM OUTSIDE THE
25 STATE AND IS NOT A MEMBER OF THE NEWS MEDIA OR BY A REQUESTER
26 WHO INTENDS TO USE THE RECORDS FOR A COMMERCIAL PURPOSE UNLESS
27 THE REQUESTER SUBMITS ONE OF THE FOLLOWING WITH THE REQUEST:

1 (a) PROOF THAT THE REQUESTER IS A MEMBER OF THE NEWS
2 MEDIA, WHICH MAY INCLUDE EITHER A COPY OF THE REQUESTER'S PRESS
3 PASS OR CERTIFICATION OF ELIGIBILITY FROM AN ASSOCIATION
4 REPRESENTING THE MAJORITY OF NEWSROOMS IN COLORADO; OR

5 (b) AN AFFIDAVIT STATING THAT THE REQUESTER DOES NOT
6 INTEND TO USE THE RECORDS FOR A COMMERCIAL PURPOSE AND THAT THE
7 REQUESTER IS FROM THE STATE.

8 (8) IF A CUSTODIAN OF A PUBLIC RECORD REQUESTED PURSUANT
9 TO THIS PART 2 ALLOWS MEMBERS OF THE PUBLIC TO PAY FOR ANY OTHER
10 SERVICE OR PRODUCT PROVIDED BY THE CUSTODIAN WITH A CREDIT CARD
11 OR ELECTRONIC PAYMENT, THE CUSTODIAN MUST ALLOW THE REQUESTER
12 OF THE PUBLIC RECORD TO PAY ANY FEE OR DEPOSIT ASSOCIATED WITH
13 THE REQUEST WITH A CREDIT CARD OR VIA AN ELECTRONIC PAYMENT.

14 **SECTION 6.** In Colorado Revised Statutes, 24-80-102.7, **amend**
15 (2)(a); and **add** (4) as follows:

16 **24-80-102.7. Records management programs - records liaison**
17 **officers.** (2) Each state agency shall:

18 (a) Establish and maintain a records management program for the
19 state agency THAT COMPLIES WITH THE REQUIREMENTS OF SUBSECTION (4)
20 OF THIS SECTION and document the policies and procedures of such
21 program. The state agency shall ensure that such program satisfies the
22 administrative and technical procedures for records maintenance and
23 management established by the state archivist pursuant to section
24 24-80-102 (12).

25 (4) (a) NOTWITHSTANDING SECTION 24-80-101 (2)(f), UNLESS AN
26 ELECTRONIC COMMUNICATION IS SUBJECT TO A LONGER RETENTION
27 REQUIREMENT PURSUANT TO THE STATE AGENCY'S RECORD MANAGEMENT

1 PROGRAM, EACH STATE AGENCY SHALL ENSURE THAT ALL ELECTRONIC
2 COMMUNICATIONS SENT OR RECEIVED BY ANY OFFICER OR EMPLOYEE OF
3 THE STATE AGENCY, THE CONTENTS OF WHICH INCLUDE ANY DISCUSSION
4 OF THE PUBLIC BUSINESS OF THE STATE AGENCY AND ARE RELEVANT TO A
5 PROCEEDING IN WHICH THE STATE AGENCY IS INVOLVED, ARE RETAINED
6 FOR AT LEAST THE LENGTH OF THE APPLICABLE PROCEEDING.

7 (b) A STATE AGENCY SHALL RETAIN ALL ELECTRONIC
8 COMMUNICATIONS IN ITS CUSTODY OR CONTROL THAT MAY BE RESPONSIVE
9 TO A REQUEST FOR RECORDS UNDER PART 2 OR 3 OF ARTICLE 72 OF THIS
10 TITLE 24 UNTIL THE REQUEST FOR RECORDS AND ANY SUBSEQUENT
11 APPEALS ARE RESOLVED, NOTWITHSTANDING THE EXPIRATION OF THE
12 PERIOD OF RETENTION UNDER SUBSECTION (4)(a) OF THIS SECTION.

13 (c) AS USED IN THIS SUBSECTION (4):

14 (I) "ELECTRONIC COMMUNICATION" HAS THE SAME MEANING SET
15 FORTH IN SECTION 24-72-202 (1.3).

16 (II) "PROCEEDING" MEANS ANY INVESTIGATION, HEARING, OR
17 OTHER PROCESS FOR OBTAINING INFORMATION CONDUCTED BY, BEFORE,
18 OR UNDER THE AUTHORITY OF ANY EXECUTIVE OR ADMINISTRATIVE BODY,
19 PANEL, OR OFFICER OF THE STATE OF COLORADO. "PROCEEDING" DOES
20 NOT INCLUDE ANY INVESTIGATION, HEARING, OR OTHER PROCESS FOR
21 OBTAINING INFORMATION CONDUCTED BY, BEFORE, OR UNDER THE
22 AUTHORITY OF THE GENERAL ASSEMBLY OR ANY COURT.

23 **SECTION 7. Act subject to petition - effective date.** This act
24 takes effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly; except
26 that, if a referendum petition is filed pursuant to section 1 (3) of article V
27 of the state constitution against this act or an item, section, or part of this

1 act within such period, then the act, item, section, or part will not take
2 effect unless approved by the people at the general election to be held in
3 November 2024 and, in such case, will take effect on the date of the
4 official declaration of the vote thereon by the governor.