

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

April 11, 2016
Date

Committee on Judiciary.

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

SB16-056 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, **amend** 24-50.5-101
4 as follows:

5 **24-50.5-101. Legislative declaration.** (1) The general assembly
6 ~~hereby~~ declares that the people of Colorado are entitled to information
7 about the workings of state government in order to reduce the waste and
8 mismanagement of public funds, to reduce abuses in government
9 authority, and to prevent illegal and unethical practices. The general
10 assembly further declares that employees of the state of Colorado are
11 citizens first and have a right and a responsibility to behave as good
12 citizens in our common efforts to provide sound management of
13 governmental affairs. To help achieve these objectives, the general
14 assembly declares that state employees should be encouraged to disclose
15 information on actions of state agencies that are not in the public interest
16 and that legislation is needed to ensure that any employee making such
17 disclosures shall not be subject to disciplinary measures or harassment by
18 any public official.

19 (2) THE GENERAL ASSEMBLY FURTHER DECLARES THAT THE
20 PURPOSE OF THE CREATION OF WHISTLEBLOWER REVIEW AGENCIES IN THIS
21 ARTICLE IS TO PROVIDE A MECHANISM FOR DETERMINING WHETHER
22 INFORMATION ABOUT STATE OPERATIONS OR CONDUCT PROVIDED BY A
23 STATE EMPLOYEE MAY BE MADE PUBLIC BY A STATE EMPLOYEE

1 WHISTLEBLOWER, EITHER TO MEMBERS OF THE GENERAL ASSEMBLY OR
2 ULTIMATELY TO THE PUBLIC, WHILE PROTECTING THAT STATE EMPLOYEE
3 FROM PUNITIVE ACTION AND WHILE MAINTAINING THE CONFIDENTIAL
4 NATURE OF INFORMATION WHERE REQUIRED BY LAW.

5 **SECTION 2.** In Colorado Revised Statutes, 24-50.5-102, **add** (6)
6 as follows:

7 **24-50.5-102. Definitions.** As used in this article, unless the
8 context otherwise requires:

9 (6) "WHISTLEBLOWER REVIEW AGENCY" MEANS THE DIRECTOR OF
10 THE OFFICE OF LEGISLATIVE LEGAL SERVICES UNDER PART 5 OF ARTICLE 3
11 OF TITLE 2, C.R.S., OR THE DIRECTOR'S DESIGNEE, THE ATTORNEY
12 GENERAL UNDER ARTICLE 31 OF THIS TITLE, OR THE ATTORNEY GENERAL'S
13 DESIGNEE, OR THE STATE COURT ADMINISTRATOR UNDER SECTION
14 13-3-101, C.R.S., OR THE STATE COURT ADMINISTRATOR'S DESIGNEE.

15 **SECTION 3.** In Colorado Revised Statutes, **amend** 24-50.5-103
16 as follows:

17 **24-50.5-103. Retaliation prohibited.** (1) Except as provided in
18 subsection (2) of this section, ~~no~~ AN appointing authority or supervisor
19 shall NOT initiate or administer any disciplinary action against an
20 employee on account of the employee's disclosure of information. This
21 ~~section shall~~ SUBSECTION (1) DOES not apply to AN EMPLOYEE WHO
22 DISCLOSES:

23 (a) ~~An employee who discloses~~ Information that he OR SHE knows
24 to be false or who discloses information with disregard for the truth or
25 falsity ~~thereof~~ OF THE INFORMATION;

26 (b) ~~An employee who discloses~~ Information from public records
27 ~~which~~ THAT are closed to public inspection pursuant to section
28 24-72-204; OR

29 (c) ~~An employee who discloses~~ WITHOUT LAWFUL AUTHORITY,
30 information ~~which~~ THAT is confidential under any other provision of law.

31 (2) ~~It shall be the obligation of~~ An employee who wishes to
32 disclose information under the protection of this article IS OBLIGATED to
33 make a good-faith effort to provide to his OR HER supervisor or appointing
34 authority or member of the general assembly the information to be
35 disclosed prior to the time of its disclosure.

36 (3) SUBSECTION (2) AND PARAGRAPHS (b) AND (c) OF SUBSECTION
37 (1) OF THIS SECTION DO NOT APPLY TO AN EMPLOYEE WHO DISCLOSES
38 INFORMATION TO A WHISTLEBLOWER REVIEW AGENCY.

39 (4) AN EMPLOYEE SHALL DISCLOSE INFORMATION UNDER
40 SUBSECTION (3) OF THIS SECTION TO THE ATTORNEY GENERAL OR THE
41 ATTORNEY GENERAL'S DESIGNEE UNLESS THE INFORMATION DISCLOSED

1 INVOLVES AN OFFICER OR EMPLOYEE OF THE DEPARTMENT OF LAW. IF THE
2 INFORMATION DISCLOSED UNDER SUBSECTION (3) OF THIS SECTION
3 INVOLVES AN OFFICER OR EMPLOYEE OF THE DEPARTMENT OF LAW, AN
4 EMPLOYEE MAY DISCLOSE THE INFORMATION TO ANY WHISTLEBLOWER
5 REVIEW AGENCY. ACCESS TO INFORMATION RECEIVED BY A
6 WHISTLEBLOWER REVIEW AGENCY UNDER THIS SECTION IS LIMITED TO
7 ONLY THOSE PERSONS CONDUCTING THE REVIEW.

8 (5) (a) (I) WITHIN THIRTY DAYS AFTER RECEIPT OF ANY
9 INFORMATION DISCLOSED UNDER SUBSECTION (3) OF THIS SECTION, A
10 WHISTLEBLOWER REVIEW AGENCY SHALL DETERMINE IN WRITING
11 WHETHER OR NOT THE INFORMATION IS:

12 (A) CLOSED TO PUBLIC INSPECTION UNDER SECTION 24-72-204; OR

13 (B) CONFIDENTIAL UNDER ANY OTHER PROVISION OF LAW.

14 (II) EACH WHISTLEBLOWER REVIEW AGENCY SHALL MAINTAIN THE
15 CONFIDENTIAL NATURE OF ANY INFORMATION DETERMINED TO BE CLOSED
16 TO PUBLIC INSPECTION OR CONFIDENTIAL UNDER SUBPARAGRAPH (I) OF
17 THIS PARAGRAPH (a).

18 (b) IF A WHISTLEBLOWER REVIEW AGENCY DETERMINES THAT ANY
19 INFORMATION DISCLOSED UNDER SUBSECTION (3) OF THIS SECTION
20 INCLUDES TRADE SECRETS, OR CONFIDENTIAL COMMERCIAL, FINANCIAL,
21 GEOLOGICAL, OR GEOPHYSICAL DATA, THE WHISTLEBLOWER REVIEW
22 AGENCY SHALL MAINTAIN THE CONFIDENTIAL NATURE OF THE
23 INFORMATION.

24 (c) (I) IF THERE IS A SUBSTANTIAL LIKELIHOOD THAT INFORMATION
25 DISCLOSED UNDER SUBSECTION (3) OF THIS SECTION TO A WHISTLEBLOWER
26 REVIEW AGENCY WILL BE RELEASED TO THE PUBLIC FOR REASONS
27 INCLUDING THAT THE WHISTLEBLOWER REVIEW AGENCY DETERMINES IN
28 WRITING THAT THE INFORMATION IS NOT CONFIDENTIAL, THAT A REQUEST
29 FOR INSPECTION OF THE INFORMATION EXISTS UNDER PART 2 OF ARTICLE
30 72 OF THIS TITLE, OR THAT A PERSON REQUESTS A COURT TO COMPEL
31 RELEASE OF THE INFORMATION, THE WHISTLEBLOWER REVIEW AGENCY
32 SHALL IMMEDIATELY GIVE WRITTEN NOTICE TO THE OWNER OF THE
33 INFORMATION THAT THE WHISTLEBLOWER REVIEW AGENCY IS IN
34 POSSESSION OF THE INFORMATION IN CONNECTION WITH A DISCLOSURE OF
35 INFORMATION UNDER SUBSECTION (3) OF THIS SECTION. WRITTEN NOTICE
36 UNDER THIS PARAGRAPH (c) TOLLS THE TIME PERIOD FOR THE INSPECTION
37 OF RECORDS UNDER SECTION 24-72-203 (3) UNTIL A REASONABLE TIME
38 AFTER THE THIRTY-DAY TIME PERIOD SPECIFIED IN SUBSECTION (6) OF THIS
39 SECTION AND THE CONCLUSION OF ANY LEGAL PROCEEDINGS UNDER
40 SUBSECTION (6) OF THIS SECTION. A WHISTLEBLOWER REVIEW AGENCY
41 SHALL NOT RELEASE ANY INFORMATION SUBJECT TO A NOTICE UNDER THIS

1 PARAGRAPH (c) UNTIL THIRTY DAYS AFTER THE DATE THAT WRITTEN
2 NOTICE IS GIVEN TO THE OWNER OF THE INFORMATION UNDER THIS
3 PARAGRAPH (c).

4 (II) THE WRITTEN NOTICE MUST CONTAIN THE DETERMINATION OF
5 THE WHISTLEBLOWER REVIEW AGENCY WITH RESPECT TO WHETHER THE
6 INFORMATION IS CONFIDENTIAL AND THE CIRCUMSTANCES CONSTITUTING
7 A SUBSTANTIAL LIKELIHOOD THAT THE INFORMATION WILL BE RELEASED
8 TO THE PUBLIC.

9 (III) THE WRITTEN NOTIFICATION REQUIREMENT OF THIS
10 PARAGRAPH (c) DOES NOT APPLY IF A WHISTLEBLOWER REVIEW AGENCY
11 MAKES A GOOD-FAITH EFFORT TO LOCATE THE OWNER OF THE
12 INFORMATION AND REASONABLY DETERMINES THAT THE OWNER CANNOT
13 BE LOCATED.

14 (6) ANY PERSON NOTIFIED UNDER PARAGRAPH (c) OF SUBSECTION
15 (5) OF THIS SECTION WHO COULD BE HARMED BY THE RELEASE OF
16 INFORMATION DESCRIBED UNDER PARAGRAPH (b) OF SUBSECTION (5) OF
17 THIS SECTION AND DISCLOSED UNDER SUBSECTION (3) OF THIS SECTION TO
18 A WHISTLEBLOWER REVIEW AGENCY MAY, WITHIN THIRTY DAYS AFTER
19 RECEIVING NOTICE UNDER PARAGRAPH (c) OF SUBSECTION (5) OF THIS
20 SECTION, FILE AN ACTION UNDER RULE 65 OF THE COLORADO RULES OF
21 CIVIL PROCEDURE AGAINST THE WHISTLEBLOWER REVIEW AGENCY IN
22 POSSESSION OF THE INFORMATION IN THE DISTRICT COURT FOR THE CITY
23 AND COUNTY OF DENVER FOR INJUNCTIVE RELIEF PROHIBITING RELEASE
24 OF THE INFORMATION.

25 (7) (a) SUBJECT TO SUBSECTION (6) OF THIS SECTION,
26 IMMEDIATELY AFTER RECEIVING ANY INFORMATION UNDER SUBSECTION
27 (3) OF THIS SECTION, A WHISTLEBLOWER REVIEW AGENCY SHALL NOTIFY
28 THE SUPERVISOR OR APPOINTING AUTHORITY OF THE EMPLOYEE THAT THE
29 WHISTLEBLOWER REVIEW AGENCY HAS RECEIVED THE INFORMATION AND
30 THAT NO RETALIATORY ACTION MAY BE TAKEN AGAINST THE EMPLOYEE
31 EXCEPT UNDER THE LIMITED CIRCUMSTANCES DESCRIBED IN PARAGRAPH
32 (a) OF SUBSECTION (1) OF THIS SECTION.

33 (b) SUBJECT TO SUBSECTION (6) OF THIS SECTION, WITHIN SIXTY
34 DAYS AFTER RECEIVING ANY INFORMATION UNDER SUBSECTION (3) OF THIS
35 SECTION, A WHISTLEBLOWER REVIEW AGENCY MAY CONFER WITH AND
36 TRANSFER THE INFORMATION TO THE ENTITY HAVING JURISDICTION OR
37 AUTHORITY TO INVESTIGATE ANY ALLEGATION OF UNLAWFUL BEHAVIOR.

38 (8) EXCEPT AS PROVIDED IN SUBSECTION (5) OF THIS SECTION, IF
39 A WHISTLEBLOWER REVIEW AGENCY DETERMINES THAT THE INFORMATION
40 OR A PORTION OF THE INFORMATION RECEIVED IS NOT PROHIBITED FROM
41 DISCLOSURE UNDER SECTION 24-72-204 OR IS NOT OTHERWISE

1 CONFIDENTIAL UNDER ANY OTHER PROVISION OF LAW, THAT INFORMATION
2 MAY BE RELEASED TO THE GENERAL ASSEMBLY OR THE PUBLIC UPON
3 REQUEST. EACH WHISTLEBLOWER REVIEW AGENCY SHALL MAINTAIN
4 RECORDS OF INFORMATION DISCLOSED TO THE WHISTLEBLOWER REVIEW
5 AGENCY UNDER SUBSECTION (3) OF THIS SECTION AND OF THE ACTION OF
6 THE WHISTLEBLOWER REVIEW AGENCY WITH RESPECT TO THE
7 INFORMATION.

8 (9) EACH WHISTLEBLOWER REVIEW AGENCY SHALL DESIGNATE A
9 PERSON OR PERSONS AS A POINT OF CONTACT FOR FUNCTIONS UNDER THIS
10 SECTION AND SHALL MAKE THE CONTACT INFORMATION FOR THAT PERSON
11 OR THOSE PERSONS PUBLIC, BOTH ON THE WEBSITE OF THE
12 WHISTLEBLOWER REVIEW AGENCY AND BY ANY OTHER APPROPRIATE
13 MEANS.

14 (10) IF THE PERSON OR PERSONS DESIGNATED UNDER SUBSECTION
15 (9) OF THIS SECTION BECOME AWARE THAT INFORMATION FROM PUBLIC
16 RECORDS THAT ARE CLOSED TO PUBLIC INSPECTION UNDER SECTION
17 24-72-204 OR INFORMATION THAT IS OTHERWISE CONFIDENTIAL UNDER
18 THE LAW IS DETERMINED TO HAVE BEEN DISCLOSED AT ANY TIME WITHOUT
19 LAWFUL AUTHORITY, THE PERSON OR PERSONS DESIGNATED IN
20 SUBSECTION (9) OF THIS SECTION SHALL MAKE REASONABLE EFFORTS TO
21 NOTIFY THE OWNER OF THE INFORMATION WITHIN A REASONABLE TIME.

22 **SECTION 4. Effective date - applicability.** This act takes effect
23 upon passage and applies to any information disclosed by a state
24 employee to a whistleblower review agency on or after said date.

25 **SECTION 5. Safety clause.** The general assembly hereby finds,
26 determines, and declares that this act is necessary for the immediate
27 preservation of the public peace, health, and safety."

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