

**First Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 17-0711.01 Bob Lackner x4350

**HOUSE BILL 17-1177**

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**HOUSE SPONSORSHIP**

**Wist and Garnett,**

**SENATE SPONSORSHIP**

**Cooke,**

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**House Committees**

State, Veterans, & Military Affairs

**Senate Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING THE USE OF ALTERNATIVE METHODS OF RESOLVING**  
102                    **DISPUTES THAT ARISE UNDER THE "COLORADO OPEN RECORDS**  
103                    **ACT".**

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**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>.)*

Commencing on the effective date of the bill, any person denied the right to inspect documents under the "Colorado Open Records Act" (CORA) or who alleges other CORA violations may apply to the state district court in which the record is located for an appropriate order. The bill also permits the parties in good faith to participate in mediation to

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.*

resolve their dispute.

The bill provides immunity for the disclosure of privileged or confidential information to the mediator.

The bill specifies requirements and procedures governing the mediation, including situations where:

- ! The party disputing the custodian's decision has chosen not to participate in the mediation before seeking a district court order;
- ! The parties participated in mediation but were unable to resolve their dispute without filing a court order; and
- ! The parties did not participate in mediation.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-72-204, **amend**  
3 (5) as follows:

4 **24-72-204. Allowance or denial of inspection - grounds -**  
5 **procedure - appeal - definitions.** (5) (a) Except as provided in  
6 subsection (5.5) of this section, any person denied the right to inspect any  
7 record covered by this part 2 may apply to the district court of the district  
8 wherein the record is found for an order directing the custodian of such  
9 record to show cause why the custodian should not permit the inspection  
10 of such record; except that, at least three business days prior to filing an  
11 application with the district court, the person who has been denied the  
12 right to inspect the record shall ~~file~~ PROVIDE a written notice ~~with~~ TO the  
13 custodian who has denied the right to inspect the record informing said  
14 custodian that the person intends to file an application with the district  
15 court. A hearing on such application ~~shall~~ MUST be held at the earliest  
16 practical time. Unless the court finds ~~that~~ the denial of the right of  
17 inspection was proper, it shall order the custodian to permit such  
18 inspection and shall award court costs and reasonable attorney fees to the  
19 prevailing applicant in an amount to be determined by the court; except

1 that no court costs and attorney fees shall be awarded to a person who has  
2 filed a lawsuit against a state public body or local public body and who  
3 applies to the court for an order pursuant to this subsection (5) for access  
4 to records of the state public body or local public body being sued if the  
5 court finds that the records being sought are related to the pending  
6 litigation and are discoverable pursuant to chapter 4 of the Colorado rules  
7 of civil procedure. In the event the court finds ~~that~~ the denial of the right  
8 of inspection was proper, the court shall award court costs and reasonable  
9 attorney fees to the custodian if the court finds that the action was  
10 frivolous, vexatious, or groundless.

11 (b) COMMENCING ON THE EFFECTIVE DATE OF THIS SUBSECTION  
12 (5)(b), ANY PERSON DENIED THE RIGHT TO INSPECT ANY RECORD OR WHO  
13 ALLEGES A VIOLATION OF THE FEE PROVISIONS OF SUBSECTION (5)(a) OF  
14 THIS SECTION MAY APPLY TO THE DISTRICT COURT OF THE DISTRICT IN  
15 WHICH THE RECORD IS LOCATED FOR AN APPROPRIATE ORDER SUBJECT TO  
16 THE FOLLOWING:

17 (I) THE PARTIES MAY IN GOOD FAITH PARTICIPATE IN MEDIATION  
18 REGARDING THE DISPUTE AND EVENLY SPLIT THE COSTS ASSOCIATED WITH  
19 THE MEDIATION PROCESS; OR

20 (II) IF THE PARTY DISPUTING THE CUSTODIAN'S DECISION HAS  
21 CHOSEN NOT TO PARTICIPATE IN MEDIATION BEFORE SEEKING A DISTRICT  
22 COURT ORDER, THE PARTY SHALL PROVIDE TO THE CUSTODIAN WRITTEN  
23 NOTICE OF THE PARTY'S INTENT TO SUE NOT LESS THAN THREE BUSINESS  
24 DAYS BEFORE FILING A COMPLAINT. THE CUSTODIAN MAY RESPOND TO THE  
25 NOTICE OF INTENT TO SUE IN WRITING BY PROPOSING THAT THE PARTIES  
26 MEDIATE AND EVENLY SPLIT THE ASSOCIATED MEDIATION COSTS.

27 (c) EITHER PARTY TO THE MEDIATION MAY BRING AN ACTION IN

1 STATE DISTRICT COURT TO ENFORCE A MEDIATION AGREEMENT WHERE THE  
2 AGREEMENT IS IN WRITING AND HAS BEEN EXECUTED BY BOTH PARTIES.

3 (d) IN ANY ACTION IN WHICH THE PARTIES PARTICIPATE IN  
4 MEDIATION, AND THE MEDIATOR DETERMINES THERE IS A LEGAL QUESTION  
5 OF WHETHER A DISCLOSURE OF THE RECORD IS PROHIBITED PURSUANT TO  
6 THIS PART 2, THE MEDIATOR MAY ORDER THE CUSTODIAN TO APPLY TO THE  
7 DISTRICT COURT IN WHICH SUCH RECORD IS LOCATED FOR THE COURT TO  
8 DETERMINE WHETHER DISCLOSURE IS PROHIBITED. THE ATTORNEY FEE  
9 PROVISIONS OF SUBSECTION (5)(e) OF THIS SECTION SHALL NOT APPLY IN  
10 CASES BROUGHT PURSUANT TO THIS SUBSECTION (5)(d).

11 (e) IN ANY ACTION IN WHICH THE PARTIES PARTICIPATED IN  
12 MEDIATION BUT WERE UNABLE TO RESOLVE THEIR DISPUTE WITHOUT  
13 RESORTING TO FILING A COURT ACTION UNDER THIS SECTION:

14 (I) IF THE COURT FINDS THE DENIAL OF THE RIGHT TO INSPECTION  
15 WAS PROPER, THE COURT MAY AWARD COURT COSTS AND REASONABLE  
16 ATTORNEY FEES TO THE CUSTODIAN; OR

17 (II) IF THE COURT FINDS THE DENIAL OF THE RIGHT TO INSPECTION  
18 WAS NOT PROPER, THE COURT SHALL AWARD THE MEDIATION COSTS,  
19 COURT COSTS, AND REASONABLE ATTORNEY FEES TO THE PREVAILING  
20 APPLICANT IN AN AMOUNT TO BE DETERMINED BY THE COURT.

21 (f) IN ANY ACTION IN WHICH THE PARTIES DID NOT PARTICIPATE IN  
22 MEDIATION:

23 (I) IF THE COURT FINDS THE DENIAL OF THE RIGHT TO INSPECTION  
24 WAS PROPER, THE COURT SHALL AWARD COURT COSTS AND REASONABLE  
25 ATTORNEY FEES TO THE CUSTODIAN IF THE COURT FINDS THE ACTION WAS  
26 FRIVOLOUS, VEXATIOUS, OR GROUNDLESS;

27 (II) IF THE COURT FINDS THE DENIAL OF THE RIGHT TO INSPECTION

1 WAS NOT PROPER AND THE APPLICANT DID NOT REQUEST MEDIATION OR  
2 REFUSED TO CONSENT TO MEDIATION WHEN REQUESTED BY THE  
3 CUSTODIAN, THE COURT SHALL AWARD COURT COSTS AND REASONABLE  
4 ATTORNEY FEES TO THE PREVAILING APPLICANT IN AN AMOUNT TO BE  
5 DETERMINED BY THE COURT BUT NOT EXCEEDING TEN THOUSAND  
6 DOLLARS; OR

7 (III) IF THE COURT FINDS THE DENIAL OF THE RIGHT TO INSPECTION  
8 WAS NOT PROPER AND THE APPLICANT REQUESTED MEDIATION BUT THE  
9 CUSTODIAN REFUSED TO CONSENT, THE COURT SHALL AWARD A PENALTY  
10 TO THE APPLICANT IN AN AMOUNT NOT TO EXCEED ONE HUNDRED  
11 THOUSAND DOLLARS, IN ADDITION TO COURT COSTS AND REASONABLE  
12 ATTORNEY FEES IN AN AMOUNT TO BE DETERMINED BY THE COURT.

13 (g) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IT SHALL  
14 NOT CONSTITUTE A VIOLATION OF ANY EVIDENTIARY PRIVILEGE OR OTHER  
15 CONFIDENTIALITY REQUIREMENT RECOGNIZED IN LAW THAT IS OTHERWISE  
16 APPLICABLE TO PUBLIC RECORDS SOUGHT TO BE INSPECTED PURSUANT TO  
17 THIS PART 2 FOR A PARTY TO A MEDIATION CONDUCTED UNDER THIS  
18 SECTION TO PROVIDE RECORDS CONTAINING CONFIDENTIAL INFORMATION  
19 TO A MEDIATOR FOR THE PURPOSE OF CONDUCTING THE MEDIATION.

20 (h) NOTWITHSTANDING ANY OTHER PROVISION OF THIS  
21 SUBSECTION (5), THE COURT SHALL NOT AWARD COURT COSTS AND  
22 REASONABLE ATTORNEY FEES AGAINST A CUSTODIAN IN ANY ACTION  
23 BROUGHT UNDER SUBSECTION (6)(a) OF THIS SECTION.

24 **SECTION 2. Act subject to petition - effective date.** This act  
25 takes effect at 12:01 a.m. on the day following the expiration of the  
26 ninety-day period after final adjournment of the general assembly (August  
27 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a

1 referendum petition is filed pursuant to section 1 (3) of article V of the  
2 state constitution against this act or an item, section, or part of this act  
3 within such period, then the act, item, section, or part will not take effect  
4 unless approved by the people at the general election to be held in  
5 November 2018 and, in such case, will take effect on the date of the  
6 official declaration of the vote thereon by the governor.