

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 10-0972.01 Ed DeCecco

HOUSE BILL 10-1393

HOUSE SPONSORSHIP

Nikkel,

SENATE SPONSORSHIP

Kopp,

House Committees
State, Veterans, & Military Affairs

Senate Committees
State, Veterans & Military Affairs

SENATE
3rd Reading Unam ended
May 10, 2010

SENATE
2nd Reading Unam ended
May 7, 2010

A BILL FOR AN ACT

101 **CONCERNING THE INFORMATION INCLUDED IN THE WEB-BASED SYSTEM**
102 **THAT PROVIDES THE PUBLIC ACCESS TO STATE FINANCIAL**
103 **INFORMATION.**

HOUSE
3rd Reading Unam ended
April 23, 2010

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://www.leg.state.co.us/billsummaries>.)

In 2009, the governor issued an executive order to create a web-based system that allows public access to government revenue and expenditures data, which system is commonly known as the "transparency online project". The web-based system was thereafter modified by law.

HOUSE
Am ended 2nd Reading
April 16, 2010

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.

The bill modifies the web-based system by:

- ! Expanding the type of information that may be excluded from the web-based system and the type of information that may be aggregated;
- ! Describing the information excluded from the web-based system and creating a process for challenging an exclusion;
- ! Waiving liability of the chief information officer of the state and the state controller for the inclusion, based upon reasonable reliance on representations by a state agency, of any information in the web-based system; and
- ! Clarifying that web-based system reports are to be made available for download.

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

2 **SECTION 1.** 24-72.4-102 (1), Colorado Revised Statutes, is
3 amended, and the said 24-72.4-102 is further amended BY THE
4 ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

5 **24-72.4-102. Definitions.** As used in this article, unless the
6 context otherwise requires:

7 (1) ~~"Chief information officer" means the chief information~~
8 ~~officer appointed pursuant to section 24-37.5-103.~~ "CHALLENGER"
9 MEANS AN INDIVIDUAL WHO CHALLENGES AN EXCLUSION OF INFORMATION
10 FROM THE WEB-BASED SYSTEM BY SENDING WRITTEN NOTICE TO A STATE
11 AGENCY IN ACCORDANCE WITH SECTION 24-72.4-103 (2) (a).

12 (1.2) "CHIEF INFORMATION OFFICER" MEANS THE CHIEF
13 INFORMATION OFFICER APPOINTED PURSUANT TO SECTION 24-37.5-103.

14 (1.4) "STATE AGENCY" MEANS ANY DEPARTMENT, DIVISION,
15 BOARD, BUREAU, COMMISSION, INSTITUTION, OR AGENCY OF THE STATE
16 FOR WHICH ACCOUNT BALANCES ARE MAINTAINED ON THE STATE'S
17 OFFICIAL BOOK OF RECORD.

18 (1.6) "STATE'S OFFICIAL BOOK OF RECORD" MEANS THE
19 ELECTRONIC DATABASE COMMONLY KNOWN AS THE COLORADO FINANCIAL

1 REPORTING SYSTEM THAT IS MAINTAINED BY THE OFFICE OF INFORMATION
2 TECHNOLOGY ON BEHALF OF THE STATE CONTROLLER PURSUANT TO THE
3 AUTHORITY SET FORTH IN SECTION 24-30-202.

4 (1.8) "UNSTRUCTURED DATA FIELD" MEANS A DATA ELEMENT IN
5 THE STATE'S OFFICIAL BOOK OF RECORD FOR WHICH THE CONTENT IS NOT
6 SELECTED FROM A PREDETERMINED SET OF OPTIONS AND THE PREPARER OF
7 THE TRANSACTION IS ALLOWED TO ENTER ANY COMBINATION OF
8 CHARACTERS OR SYMBOLS.

9 **SECTION 2.** The introductory portion to 24-72.4-103 (1) and
10 24-72.4-103 (1) (a), (1) (d), (1) (f), and (1) (g), Colorado Revised
11 Statutes, are amended, and the said 24-72.4-103 (1) is further amended
12 BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to
13 read:

14 **24-72.4-103. Web-based system - enhancements - procedure**
15 **for challenging exclusions.** (1) ~~No later than January 1, 2010;~~ The chief
16 information officer shall modify the web-based system to meet the
17 following requirements:

18 (a) EXCEPT AS SET FORTH IN PARAGRAPHS (g) AND (i) OF THIS
19 SUBSECTION (1), the state expenditures and revenues data included in the
20 web-based system shall be the expenditure and revenue data included in
21 ~~the state financial system database commonly known as the financial data~~
22 ~~warehouse, created by the office of information technology on behalf of~~
23 ~~the state controller pursuant to the authority set forth in section~~
24 ~~24-30-202; except that, regardless of the form of the data in the financial~~
25 ~~data warehouse, where access to each individual transaction is likely to~~
26 ~~hinder, rather than foster, the goal of accountability and transparency, the~~
27 ~~system may provide access to aggregated information~~ STATE'S OFFICIAL

1 BOOK OF RECORD;

2 (d) The web-based system REPORTS shall be available for
3 download in a structured data format, such as extensible markup
4 language;

5 (f) The web-based system shall include archived revenue and
6 expenditure data for the ten prior state fiscal years; except that no data
7 shall be required for any state fiscal year prior to July 1, 2009, and, for the
8 2009-10 state fiscal year only, no state revenue data shall be required to
9 be archived; and

10 (g) The web-based system shall not include the following
11 information:

12 (I) Any information that is not a public record or THAT IS EXEMPT
13 FROM DISCLOSURE PURSUANT TO THE "COLORADO OPEN RECORDS ACT",
14 PART 2 OF ARTICLE 72 OF THIS TITLE, OR PURSUANT TO PART 3 OF ARTICLE
15 72 OF THIS TITLE;

16 (II) Any information that is confidential pursuant to state or
17 federal law;

18 (III) ANY INFORMATION CONTAINED IN AN UNSTRUCTURED DATA
19 FIELD; OR

20 (IV) ANY INFORMATION THAT THE CHIEF FINANCIAL OFFICER OF A
21 STATE AGENCY OR THE DIRECTOR OR HEAD OF A STATE AGENCY REQUESTS
22 TO NOT BE DISCLOSED BECAUSE THE POTENTIAL INJURY TO THE PUBLIC
23 INTEREST ARISING FROM THE DISCLOSURE OF SUCH INFORMATION ON THE
24 WEB-BASED SYSTEM OUTWEIGHS THE PUBLIC INTEREST IN HAVING SUCH
25 INFORMATION PUBLICLY AVAILABLE ON THE WEB-BASED SYSTEM. FOR
26 PURPOSES OF THIS SUBPARAGRAPH (IV), THE PUBLIC INTEREST ARISING
27 FROM THE DISCLOSURE OF INFORMATION SHALL INCLUDE THE PROTECTION

1 OF THE PRIVACY, SAFETY, AND SECURITY OF INDIVIDUALS.

2 (h) FOR ANY INFORMATION EXCLUDED FROM THE WEB-BASED
3 SYSTEM PURSUANT TO PARAGRAPH (g) OF THIS SUBSECTION (1), THE
4 WEB-BASED SYSTEM SHALL INCLUDE:

5 (I) A DESCRIPTION OF THE INFORMATION EXCLUDED;

6 (II) THE BASIS FOR EXCLUSION; AND

7 (III) THE STATE AGENCY THAT REQUESTED THE EXCLUSION; AND

8 (i) REGARDLESS OF THE FORM OF THE DATA IN THE STATE'S
9 OFFICIAL BOOK OF RECORD, THE WEB-BASED SYSTEM MAY PROVIDE
10 ACCESS TO AGGREGATED INFORMATION WHERE:

11 (I) ACCESS TO EACH INDIVIDUAL TRANSACTION IS LIKELY TO
12 HINDER, RATHER THAN FOSTER, THE GOAL OF ACCOUNTABILITY AND
13 TRANSPARENCY;

14 (II) AN INDIVIDUAL TRANSACTION INCLUDES INFORMATION THAT
15 IS ONLY PARTIALLY EXCLUDABLE PURSUANT TO PARAGRAPH (g) OF THIS
16 SUBSECTION (1); OR

17 (III) AN ACCOUNTING CODE CONTAINED IN THE STATE'S OFFICIAL
18 BOOK OF RECORD INCLUDES BOTH INCLUDABLE AND EXCLUDABLE
19 TRANSACTIONS PURSUANT TO PARAGRAPH (g) OF THIS SUBSECTION (1).

20 **SECTION 3.** 24-72.4-103, Colorado Revised Statutes, is
21 amended BY THE ADDITION OF A NEW SUBSECTION to read:

22 **24-72.4-103. Web-based system - enhancements - procedure**
23 **for challenging exclusions.** (2) (a) AN INDIVIDUAL MAY CHALLENGE
24 THE EXCLUSION OF INFORMATION FROM THE WEB-BASED SYSTEM
25 PURSUANT TO PARAGRAPH (g) OF SUBSECTION (1) OF THIS SECTION BY
26 SENDING WRITTEN NOTICE TO THE STATE AGENCY THAT REQUESTED THE
27 EXCLUSION. THE NOTICE SHALL SET FORTH THE BASIS FOR CHALLENGING

1 THE EXCLUSION AND SHALL CITE THIS SECTION.

2 (b) WITHIN THIRTY CALENDAR DAYS OF RECEIVING A CHALLENGE
3 TO AN EXCLUSION PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2),
4 THE STATE AGENCY RECEIVING THE CHALLENGE SHALL RESPOND IN
5 WRITING TO THE CHALLENGER. IN THE RESPONSE, THE STATE AGENCY
6 MAY:

7 (I) AGREE TO WITHDRAW THE EXCLUSION;

8 (II) DENY THE CHALLENGE; OR

9 (III) AGREE TO WITHDRAW THE EXCLUSION, IN PART, AND DENY
10 THE CHALLENGE, IN PART.

11 (c) IF, IN RESPONSE TO THE CHALLENGE, THE STATE AGENCY
12 AGREES TO WITHDRAW THE EXCLUSION, IN WHOLE OR IN PART, THEN THE
13 STATE AGENCY SHALL INFORM THE STATE CONTROLLER IN WRITING WITHIN
14 TWO WORKING DAYS OF THE DATE THE RESPONSE IS SENT TO A
15 CHALLENGER PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2), AND
16 THE STATE CONTROLLER SHALL MAKE THE APPROPRIATE INFORMATION
17 AVAILABLE ON THE WEB-BASED SYSTEM PROMPTLY, WHICH IN NO CASE
18 SHALL BE LATER THAN TEN WORKING DAYS OF RECEIPT.

19 (d) IF THE STATE AGENCY DENIES A CHALLENGE BROUGHT
20 PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2), IN WHOLE OR IN
21 PART, OR FAILS TO RESPOND TO A CHALLENGE IN WRITING WITHIN THIRTY
22 CALENDAR DAYS, THEN A CHALLENGER MAY APPLY TO THE DISTRICT
23 COURT FOR THE CITY AND COUNTY OF DENVER FOR AN ORDER DIRECTING
24 THE STATE AGENCY DENYING THE CHALLENGE TO SHOW CAUSE WHY THE
25 CHALLENGED EXCLUSION IS PROPER; EXCEPT THAT AN ACTION MAY NOT
26 BE INITIATED PURSUANT TO THIS PARAGRAPH (d) IF A STATE AGENCY HAS
27 FIRST INITIATED AN ACTION PURSUANT TO PARAGRAPH (e) OF THIS

1 SUBSECTION (2) WITH RESPECT TO THE SAME EXCLUSION. UPON A FINDING
2 THAT INFORMATION WAS IMPROPERLY EXCLUDED FROM THE WEB-BASED
3 SYSTEM, THE COURT SHALL ORDER THE STATE AGENCY TO WITHDRAW THE
4 EXCLUSION AND THE STATE CONTROLLER TO MAKE THE EXCLUDED
5 INFORMATION AVAILABLE ON THE WEB-BASED SYSTEM. IN ORDER TO
6 PREVAIL IN AN APPLICATION BROUGHT UNDER THIS PARAGRAPH (d), A
7 CHALLENGER SHALL BEAR THE BURDEN OF PROVING BY A PREPONDERANCE
8 OF THE EVIDENCE THAT THE OFFICE OR AGENCY IMPROPERLY EXCLUDED
9 INFORMATION FROM THE WEB-BASED SYSTEM.

10 (e) IF THE STATE AGENCY, ACTING IN GOOD FAITH AND AFTER
11 RECEIVING NOTICE OF A CHALLENGE PURSUANT TO PARAGRAPH (a) OF THIS
12 SUBSECTION (2), IS UNABLE TO DETERMINE WHETHER EXCLUSION OF
13 INFORMATION ON THE WEB-BASED SYSTEM IS PROPER PURSUANT TO
14 PARAGRAPH (g) OF SUBSECTION (1) OF THIS SECTION, THE STATE AGENCY
15 MAY APPLY TO THE DISTRICT COURT FOR AN ORDER PERMITTING THE
16 STATE AGENCY TO EXCLUDE INFORMATION FROM THE WEB-BASED SYSTEM
17 OR FOR THE COURT TO DETERMINE THAT THE EXCLUSION IS PROHIBITED.
18 IN AN ACTION BROUGHT PURSUANT TO THIS PARAGRAPH (e), THE BURDEN
19 OF PROOF SHALL BE UPON THE STATE AGENCY ASSERTING THE EXCLUSION
20 TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT THE
21 INFORMATION MAY BE PROPERLY EXCLUDED FROM THE WEB-BASED
22 SYSTEM. A CHALLENGER SHALL HAVE NOTICE OF THE ACTION SERVED
23 UPON HIM OR HER IN THE MANNER PROVIDED FOR SERVICE OF PROCESS BY
24 THE COLORADO RULES OF CIVIL PROCEDURE AND SHALL HAVE THE RIGHT
25 TO APPEAR AND BE HEARD.

26 (f) (I) EXCEPT AS SET FORTH IN SUBPARAGRAPH (II) OF THIS
27 PARAGRAPH (f), IF A COURT DETERMINES THAT A STATE AGENCY

1 IMPROPERLY EXCLUDED INFORMATION FROM THE WEB-BASED SYSTEM, THE
2 COURT SHALL AWARD REASONABLE ATTORNEY FEES AND COSTS TO A
3 CHALLENGER WHO APPEARS IN THE COURT PROCEEDING.

4 (II) THE ATTORNEY FEES PROVISION OF SUBPARAGRAPH (I) OF THIS
5 PARAGRAPH (f) SHALL NOT APPLY IN CASES BROUGHT PURSUANT TO
6 PARAGRAPH (e) OF THIS SUBSECTION (2) IF THE COURT FINDS THAT THE
7 STATE AGENCY ACTED IN GOOD FAITH AND, AFTER EXERCISING
8 REASONABLE DILIGENCE AND MAKING REASONABLE INQUIRY, WAS UNABLE
9 TO DETERMINE IF EXCLUSION FROM THE WEB-BASED SYSTEM WAS PROPER
10 WITHOUT A RULING BY THE COURT.

11 **SECTION 4.** Article 72.4 of title 24, Colorado Revised Statutes,
12 is amended BY THE ADDITION OF A NEW SECTION to read:

13 **24-72.4-104. Information in web-based system - limit on duty.**

14 (1) THE CHIEF INFORMATION OFFICER AND THE STATE CONTROLLER MAY
15 REASONABLY RELY UPON REPRESENTATIONS BY A STATE AGENCY IN
16 DETERMINING WHAT INFORMATION TO INCLUDE IN THE WEB-BASED
17 SYSTEM, AND NEITHER THE CHIEF INFORMATION OFFICER NOR THE STATE
18 CONTROLLER SHALL HAVE A DUTY TO INDEPENDENTLY REVIEW THE
19 INFORMATION FOR COMPLIANCE WITH THIS ARTICLE PRIOR TO POSTING THE
20 INFORMATION ON THE WEB-BASED SYSTEM.

21 (2) THE LIMITATION ON DUTY SET FORTH IN SUBSECTION (1) OF
22 THIS SECTION SHALL BE IN ADDITION TO ANY LIMITATION ON DUTY AND
23 LIABILITY PROVIDED BY THE "COLORADO GOVERNMENTAL IMMUNITY
24 ACT", ARTICLE 10 OF THIS TITLE.

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.