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HOUSE BILL 10-1393

BY REPRESENTATIVE(S) Nikkel, Acree, Balmer, Bradford, Frangas, Gardner C., Gerou, Kefalas, Kerr J., Looper, Massey, Middleton, Priola, Roberts, Stephens, Summers;
also SENATOR(S) Kopp, Cadman, Newell, Schultheis, Williams.

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

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

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

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

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

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

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

(1.6) "STATE'S OFFICIAL BOOK OF RECORD" MEANS THE ELECTRONIC DATABASE COMMONLY KNOWN AS THE COLORADO FINANCIAL REPORTING SYSTEM THAT IS MAINTAINED BY THE OFFICE OF INFORMATION TECHNOLOGY ON BEHALF OF THE STATE CONTROLLER PURSUANT TO THE AUTHORITY SET FORTH IN SECTION 24-30-202.

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

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

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

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

~~may provide access to aggregated information~~ STATE'S OFFICIAL BOOK OF RECORD;

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

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

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

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

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

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

(IV) ANY INFORMATION THAT THE CHIEF FINANCIAL OFFICER OF A STATE AGENCY OR THE DIRECTOR OR HEAD OF A STATE AGENCY REQUESTS TO NOT BE DISCLOSED BECAUSE THE POTENTIAL INJURY TO THE PUBLIC INTEREST ARISING FROM THE DISCLOSURE OF SUCH INFORMATION ON THE WEB-BASED SYSTEM OUTWEIGHS THE PUBLIC INTEREST IN HAVING SUCH INFORMATION PUBLICLY AVAILABLE ON THE WEB-BASED SYSTEM. FOR PURPOSES OF THIS SUBPARAGRAPH (IV), THE PUBLIC INTEREST ARISING FROM THE DISCLOSURE OF INFORMATION SHALL INCLUDE THE PROTECTION OF THE PRIVACY, SAFETY, AND SECURITY OF INDIVIDUALS.

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

(I) A DESCRIPTION OF THE INFORMATION EXCLUDED;

(II) THE BASIS FOR EXCLUSION; AND

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

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

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

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

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

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

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

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

(I) AGREE TO WITHDRAW THE EXCLUSION;

(II) DENY THE CHALLENGE; OR

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

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

(d) IF THE STATE AGENCY DENIES A CHALLENGE BROUGHT PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2), IN WHOLE OR IN PART, OR FAILS TO RESPOND TO A CHALLENGE IN WRITING WITHIN THIRTY CALENDAR DAYS, THEN A CHALLENGER MAY APPLY TO THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER FOR AN ORDER DIRECTING THE STATE AGENCY DENYING THE CHALLENGE TO SHOW CAUSE WHY THE CHALLENGED EXCLUSION IS PROPER; EXCEPT THAT AN ACTION MAY NOT BE INITIATED PURSUANT TO THIS PARAGRAPH (d) IF A STATE AGENCY HAS FIRST INITIATED AN ACTION PURSUANT TO PARAGRAPH (e) OF THIS SUBSECTION (2) WITH RESPECT TO THE SAME EXCLUSION. UPON A FINDING THAT INFORMATION WAS IMPROPERLY EXCLUDED FROM THE WEB-BASED SYSTEM, THE COURT SHALL ORDER THE STATE AGENCY TO WITHDRAW THE EXCLUSION AND THE STATE CONTROLLER TO MAKE THE EXCLUDED INFORMATION AVAILABLE ON THE WEB-BASED SYSTEM. IN ORDER TO PREVAIL IN AN APPLICATION BROUGHT UNDER THIS PARAGRAPH (d), A CHALLENGER SHALL BEAR THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT THE OFFICE OR AGENCY IMPROPERLY EXCLUDED INFORMATION FROM THE WEB-BASED SYSTEM.

(e) IF THE STATE AGENCY, ACTING IN GOOD FAITH AND AFTER RECEIVING NOTICE OF A CHALLENGE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2), IS UNABLE TO DETERMINE WHETHER EXCLUSION OF INFORMATION ON THE WEB-BASED SYSTEM IS PROPER PURSUANT TO PARAGRAPH (g) OF SUBSECTION (1) OF THIS SECTION, THE STATE AGENCY MAY APPLY TO THE DISTRICT COURT FOR AN ORDER PERMITTING THE STATE AGENCY TO EXCLUDE INFORMATION FROM THE WEB-BASED SYSTEM OR FOR THE COURT TO DETERMINE THAT THE EXCLUSION IS PROHIBITED. IN AN ACTION BROUGHT PURSUANT TO THIS PARAGRAPH (e), THE BURDEN OF PROOF SHALL BE UPON THE STATE AGENCY ASSERTING THE EXCLUSION TO PROVE BY

A PREPONDERANCE OF THE EVIDENCE THAT THE INFORMATION MAY BE PROPERLY EXCLUDED FROM THE WEB-BASED SYSTEM. A CHALLENGER SHALL HAVE NOTICE OF THE ACTION SERVED UPON HIM OR HER IN THE MANNER PROVIDED FOR SERVICE OF PROCESS BY THE COLORADO RULES OF CIVIL PROCEDURE AND SHALL HAVE THE RIGHT TO APPEAR AND BE HEARD.

(f) (I) EXCEPT AS SET FORTH IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (f), IF A COURT DETERMINES THAT A STATE AGENCY IMPROPERLY EXCLUDED INFORMATION FROM THE WEB-BASED SYSTEM, THE COURT SHALL AWARD REASONABLE ATTORNEY FEES AND COSTS TO A CHALLENGER WHO APPEARS IN THE COURT PROCEEDING.

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

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

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

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

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

SECTION 5. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Terrance D. Carroll
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO