

**First Regular Session  
Sixty-third General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 01-0864.01 Christy Chase

**HOUSE BILL 01-1359**

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**HOUSE SPONSORSHIP**

**Mitchell**, and Grossman

**SENATE SPONSORSHIP**

**Matsunaka**, and Andrews

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**House Committees**

Information & Technology

**Senate Committees**

Govt, Veterans & Military Relations, & Trans

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**A BILL FOR AN ACT**

101      **CONCERNING PUBLIC ACCESS TO INFORMATION, AND, IN CONNECTION**  
102            **THEREWITH, PROVIDING FOR PUBLIC ACCESS TO INFORMATION**  
103            **DISCUSSED IN CERTAIN MEETINGS OF PUBLIC BODIES AND**  
104            **PROVIDING REMEDIES AND PENALTIES FOR VIOLATIONS OF THE**  
105            **OPEN MEETINGS LAW AND THE OPEN RECORDS ACT.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Requires discussions that occur during an executive session of a state or local public body, except discussions by a local public body concerning students, to be recorded in the same manner and media in which minutes of open meetings are recorded. Requires the minutes 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.*

HOUSE  
3rd Reading Unamended  
April 6, 2001

HOUSE  
Amended 2nd Reading  
April 5, 2001

include a reference to the statutory citation that authorizes the executive session and the actual content of the discussion. Makes an exception if, based on the opinion of the attorney representing the public body, the discussions constitute a privileged attorney-client communication.

Specifies that no portion of the minutes of an executive session shall be open to public inspection unless a court finds, upon a showing of grounds sufficient to support a reasonable belief that the executive session was held in violation of the open meetings law, and after an in camera review of the minutes of the session, that the executive session was held in violation of the open meetings law. If a court finds an executive session to have been held in contravention of the open meetings law, requires the minutes of the session to be open to public inspection. Authorizes an award of court costs and attorney fees to the prevailing party if the court finds that:

- An applicant seeking access to the minutes of an executive session failed to show grounds sufficient to support a reasonable belief that the executive session was held in violation of the open meetings law; and
- The action was frivolous, vexatious, or groundless.

Requires a state or local public body to include in the public announcement made by the body concerning the topic for discussion in the executive session the following information:

- A reference to the specific statutory citation that authorizes the body to conduct an executive session; and
- The identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session was authorized.

Specifies that state or local public bodies are not authorized to meet in an executive session to discuss personnel matters that:

- Concern a member of the state or local public body or an elected official;
- Concern the appointment of a person to fill the office of a member of the state or local public body or an elected official; or
- Do not require the discussion of matters personal to particular employees.

For purposes of records submitted by or on behalf of an applicant or candidate for an executive position, eliminates the requirement that an applicant or candidate who is not a finalist make a written request to avoid release of said records to the public. Modifies the definition of "finalist" to eliminate applicants or candidates who are chosen for an interview or who are still being considered after a certain period, and specifies that a finalist is a member of the final group from which the appointment is made. When a limited specified number of applicants or candidates qualify for the position, specifies that said applicants or candidates are

finalists. Specifies that "executive position" means a position as the chief executive officer of a state agency, institution, or political subdivision.

Authorizes an award of court costs and reasonable attorney fees to the prevailing applicant in an action to compel the custodian of public records to permit the inspection of the records in the event the court finds that the denial of the right to inspect was improper. Authorizes an award of court costs and reasonable attorney fees to the custodian of public records in an action to compel the custodian to permit the inspection of the records in the event the court finds that the denial of the right to inspect was proper and the action was frivolous, vexatious, or groundless. Prohibits an award of court costs and attorney fees to a person seeking access to the records of a state or local public body that the person has sued if the court finds that the records being sought are related to the pending litigation and can be obtained through the discovery process authorized by the Colorado rules of civil procedure. Eliminates the personal liability of a custodian who denies the right of inspection of a public record.

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

**SECTION 1.** 24-6-402 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**24-6-402. Meetings - open to public.**

(2) (d.5) (I) (A) DISCUSSIONS THAT OCCUR IN AN EXECUTIVE SESSION OF A STATE PUBLIC BODY SHALL BE RECORDED IN THE SAME MANNER AND MEDIA THAT THE STATE PUBLIC BODY USES TO RECORD THE MINUTES OF OPEN MEETINGS. A STATE PUBLIC BODY MAY SATISFY THE RECORDING REQUIREMENTS OF THIS SUB-SUBPARAGRAPH (A) BY MAKING ANY FORM OF ELECTRONIC RECORDING OF THE DISCUSSIONS IN AN EXECUTIVE SESSION OF THE STATE PUBLIC BODY. EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (I), THE RECORD OF AN EXECUTIVE SESSION SHALL REFLECT THE SPECIFIC CITATION TO THE PROVISION IN SUBSECTION (3) OF THIS SECTION THAT AUTHORIZES THE STATE PUBLIC BODY TO MEET IN AN EXECUTIVE SESSION, THE ACTUAL CONTENTS OF THE DISCUSSION DURING THE SESSION, AND A SIGNED STATEMENT FROM THE CHAIR OF THE

1 EXECUTIVE SESSION ATTESTING THAT ANY WRITTEN MINUTES  
2 SUBSTANTIALLY REFLECT THE SUBSTANCE OF THE DISCUSSIONS DURING THE  
3 EXECUTIVE SESSION. FOR PURPOSES OF THIS SUB-SUBPARAGRAPH (A),  
4 "ACTUAL CONTENTS OF THE DISCUSSION" SHALL NOT BE CONSTRUED TO  
5 REQUIRE THE MINUTES OF AN EXECUTIVE SESSION TO CONTAIN A VERBATIM  
6 TRANSCRIPT OF THE DISCUSSION DURING SAID EXECUTIVE SESSION. THE  
7 PROVISIONS OF THIS SUB-SUBPARAGRAPH (A) SHALL NOT APPLY TO  
8 DISCUSSIONS OF INDIVIDUAL STUDENTS BY A STATE PUBLIC BODY  
9 PURSUANT TO PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION.

10 (B) IF, IN THE OPINION OF THE ATTORNEY WHO IS REPRESENTING  
11 THE STATE PUBLIC BODY AND IS IN ATTENDANCE AT THE EXECUTIVE  
12 SESSION, ALL OR A PORTION OF THE DISCUSSION DURING THE EXECUTIVE  
13 SESSION CONSTITUTES A PRIVILEGED ATTORNEY-CLIENT COMMUNICATION,  
14 NO RECORD      SHALL BE REQUIRED TO BE KEPT OF THE PART OF THE  
15 DISCUSSION THAT CONSTITUTES A PRIVILEGED ATTORNEY-CLIENT  
16 COMMUNICATION. ANY ELECTRONIC RECORD OF SAID EXECUTIVE SESSION  
17 DISCUSSION SHALL REFLECT THAT NO FURTHER RECORD WAS KEPT OF THE  
18 DISCUSSION BASED ON THE OPINION OF THE ATTORNEY REPRESENTING THE  
19 STATE PUBLIC BODY, AS STATED FOR THE RECORD DURING THE EXECUTIVE  
20 SESSION, THAT THE DISCUSSION CONSTITUTES A PRIVILEGED  
21 ATTORNEY-CLIENT COMMUNICATION. ANY WRITTEN MINUTES SHALL  
22 CONTAIN A SIGNED STATEMENT FROM THE ATTORNEY REPRESENTING THE  
23 STATE PUBLIC BODY ATTESTING THAT THE PORTION OF THE EXECUTIVE  
24 SESSION THAT WAS NOT RECORDED CONSTITUTED A PRIVILEGED  
25 ATTORNEY-CLIENT COMMUNICATION IN THE OPINION OF THE ATTORNEY  
26 AND A SIGNED STATEMENT FROM THE CHAIR OF THE EXECUTIVE SESSION  
27 ATTESTING THAT THE PORTION OF THE EXECUTIVE SESSION THAT WAS NOT

1 RECORDED WAS CONFINED TO THE TOPIC AUTHORIZED FOR DISCUSSION IN  
2 AN EXECUTIVE SESSION PURSUANT TO SUBSECTION (3) OF THIS SECTION.

3 (C) IF A COURT FINDS, UPON APPLICATION OF A PERSON SEEKING  
4 ACCESS TO THE RECORD OF THE EXECUTIVE SESSION OF A STATE PUBLIC  
5 BODY IN ACCORDANCE WITH SECTION 24-72-204 (5.5) AND AFTER AN IN  
6 CAMERA REVIEW OF THE RECORD OF THE EXECUTIVE SESSION, THAT THE  
7 STATE PUBLIC BODY ENGAGED IN SUBSTANTIAL DISCUSSION OF ANY  
8 MATTERS NOT ENUMERATED IN SUBSECTION (3) OF THIS SECTION OR THAT  
9 THE BODY ADOPTED A PROPOSED POLICY, POSITION, RESOLUTION, RULE,  
10 REGULATION, OR FORMAL ACTION IN THE EXECUTIVE SESSION IN  
11 CONTRAVENTION OF PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION,  
12 THE PORTION OF THE RECORD OF THE EXECUTIVE SESSION THAT REFLECTS  
13 THE SUBSTANTIAL DISCUSSION OF MATTERS NOT ENUMERATED IN  
14 SUBSECTION (3) OF THIS SECTION OR THE ADOPTION OF A PROPOSED POLICY,  
15 POSITION, RESOLUTION, RULE, REGULATION, OR FORMAL ACTION SHALL BE  
16 OPEN TO PUBLIC INSPECTION PURSUANT TO SECTION 24-72-204 (5.5).

17 (D) NO PORTION OF THE RECORD OF AN EXECUTIVE SESSION OF A  
18 STATE PUBLIC BODY SHALL BE OPEN FOR PUBLIC INSPECTION OR SUBJECT  
19 TO DISCOVERY IN ANY ADMINISTRATIVE OR JUDICIAL PROCEEDING, EXCEPT  
20 UPON THE CONSENT OF THE STATE PUBLIC BODY OR AS PROVIDED IN  
21 SUB-SUBPARAGRAPH (C) OF THIS SUBPARAGRAPH (I) AND SECTION  
22 24-72-204 (5.5).

23 (E) THE RECORD OF AN EXECUTIVE SESSION OF A STATE PUBLIC  
24 BODY RECORDED PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS  
25 SUBPARAGRAPH (I) SHALL BE RETAINED FOR AT LEAST NINETY DAYS AFTER  
26 THE DATE OF THE EXECUTIVE SESSION.

27 (II) (A) DISCUSSIONS THAT OCCUR IN AN EXECUTIVE SESSION OF A

1 LOCAL PUBLIC BODY SHALL BE RECORDED IN THE SAME MANNER AND  
2 MEDIA THAT THE LOCAL PUBLIC BODY USES TO RECORD THE MINUTES OF  
3 OPEN MEETINGS. A LOCAL PUBLIC BODY MAY SATISFY THE RECORDING  
4 REQUIREMENTS OF THIS SUB-SUBPARAGRAPH (A) BY MAKING ANY FORM OF  
5 ELECTRONIC RECORDING OF THE DISCUSSIONS IN AN EXECUTIVE SESSION OF  
6 THE LOCAL PUBLIC BODY. EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH  
7 (B) OF THIS SUBPARAGRAPH (II), THE RECORD OF AN EXECUTIVE SESSION  
8 SHALL REFLECT THE SPECIFIC CITATION TO THE PROVISION IN SUBSECTION  
9 (4) OF THIS SECTION THAT AUTHORIZES THE LOCAL PUBLIC BODY TO MEET  
10 IN AN EXECUTIVE SESSION, THE ACTUAL CONTENTS OF THE DISCUSSION  
11 DURING THE SESSION, AND A SIGNED STATEMENT FROM THE CHAIR OF THE  
12 EXECUTIVE SESSION ATTESTING THAT ANY WRITTEN MINUTES  
13 SUBSTANTIALLY REFLECT THE SUBSTANCE OF THE DISCUSSIONS DURING THE  
14 EXECUTIVE SESSION. FOR PURPOSES OF THIS SUB-SUBPARAGRAPH (A),  
15 "ACTUAL CONTENTS OF THE DISCUSSION" SHALL NOT BE CONSTRUED TO  
16 REQUIRE THE MINUTES OF AN EXECUTIVE SESSION TO CONTAIN A VERBATIM  
17 TRANSCRIPT OF THE DISCUSSION DURING SAID EXECUTIVE SESSION. THE  
18 PROVISIONS OF THIS SUB-SUBPARAGRAPH (A) SHALL NOT APPLY TO  
19 DISCUSSIONS OF INDIVIDUAL STUDENTS BY A LOCAL PUBLIC BODY  
20 PURSUANT TO PARAGRAPH (h) OF SUBSECTION (4) OF THIS SECTION.

21 (B) IF, IN THE OPINION OF THE ATTORNEY WHO IS REPRESENTING  
22 THE LOCAL PUBLIC BODY AND WHO IS IN ATTENDANCE AT THE EXECUTIVE  
23 SESSION, ALL OR A PORTION OF THE DISCUSSION DURING THE EXECUTIVE  
24 SESSION CONSTITUTES A PRIVILEGED ATTORNEY-CLIENT COMMUNICATION,  
25 NO RECORD        SHALL BE REQUIRED TO BE KEPT OF THE PART OF THE  
26 DISCUSSION THAT CONSTITUTES A PRIVILEGED ATTORNEY-CLIENT  
27 COMMUNICATION. ANY ELECTRONIC RECORD OF SAID EXECUTIVE SESSION

1 DISCUSSION SHALL REFLECT THAT NO FURTHER RECORD WAS KEPT OF THE  
2 DISCUSSION BASED ON THE OPINION OF THE ATTORNEY REPRESENTING THE  
3 LOCAL PUBLIC BODY, AS STATED FOR THE RECORD DURING THE EXECUTIVE  
4 SESSION, THAT THE DISCUSSION CONSTITUTES A PRIVILEGED  
5 ATTORNEY-CLIENT COMMUNICATION. ANY WRITTEN MINUTES SHALL  
6 CONTAIN A SIGNED STATEMENT FROM THE ATTORNEY REPRESENTING THE  
7 LOCAL PUBLIC BODY ATTESTING THAT THE PORTION OF THE EXECUTIVE  
8 SESSION THAT WAS NOT RECORDED CONSTITUTED A PRIVILEGED  
9 ATTORNEY-CLIENT COMMUNICATION IN THE OPINION OF THE ATTORNEY  
10 AND A SIGNED STATEMENT FROM THE CHAIR OF THE EXECUTIVE SESSION  
11 ATTESTING THAT THE PORTION OF THE EXECUTIVE SESSION THAT WAS NOT  
12 RECORDED WAS CONFINED TO THE TOPIC AUTHORIZED FOR DISCUSSION IN  
13 AN EXECUTIVE SESSION PURSUANT TO SUBSECTION (4) OF THIS SECTION.

14 (C) IF A COURT FINDS, UPON APPLICATION OF A PERSON SEEKING  
15 ACCESS TO THE RECORD OF THE EXECUTIVE SESSION OF A LOCAL PUBLIC  
16 BODY IN ACCORDANCE WITH SECTION 24-72-204 (5.5) AND AFTER AN IN  
17 CAMERA REVIEW OF THE RECORD OF THE EXECUTIVE SESSION, THAT THE  
18 LOCAL PUBLIC BODY ENGAGED IN SUBSTANTIAL DISCUSSION OF ANY  
19 MATTERS NOT ENUMERATED IN SUBSECTION (4) OF THIS SECTION OR THAT  
20 THE BODY ADOPTED A PROPOSED POLICY, POSITION, RESOLUTION, RULE,  
21 REGULATION, OR FORMAL ACTION IN THE EXECUTIVE SESSION IN  
22 CONTRAVENTION OF SUBSECTION (4) OF THIS SECTION, THE PORTION OF THE  
23 RECORD OF THE EXECUTIVE SESSION THAT REFLECTS THE SUBSTANTIAL  
24 DISCUSSION OF MATTERS NOT ENUMERATED IN SUBSECTION (4) OF THIS  
25 SECTION OR THE ADOPTION OF A PROPOSED POLICY, POSITION, RESOLUTION,  
26 RULE, REGULATION, OR FORMAL ACTION SHALL BE OPEN TO PUBLIC  
27 INSPECTION PURSUANT TO SECTION 24-72-204 (5.5).

1 (D) NO PORTION OF THE RECORD OF AN EXECUTIVE SESSION OF A  
2 LOCAL PUBLIC BODY SHALL BE OPEN FOR PUBLIC INSPECTION OR SUBJECT  
3 TO DISCOVERY IN ANY ADMINISTRATIVE OR JUDICIAL PROCEEDING, EXCEPT  
4 UPON THE CONSENT OF THE LOCAL PUBLIC BODY OR AS PROVIDED IN  
5 SUB-SUBPARAGRAPH (C) OF THIS SUBPARAGRAPH (II) AND SECTION  
6 24-72-204 (5.5).

7 (E) THE RECORD OF AN EXECUTIVE SESSION OF A LOCAL PUBLIC  
8 BODY RECORDED PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS  
9 SUBPARAGRAPH (II) SHALL BE RETAINED FOR AT LEAST NINETY DAYS AFTER  
10 THE DATE OF THE EXECUTIVE SESSION.

11 **SECTION 2.** The introductory portions to 24-6-402 (3) (a) and  
12 (4) and 24-6-402 (3) (b) and (4) (f), Colorado Revised Statutes, are  
13 amended to read:

14 **24-6-402. Meetings - open to public.** (3) (a) The members of a  
15 state public body subject to this part 4, upon the announcement by the  
16 state public body to the public of the topic for discussion in the executive  
17 session, INCLUDING SPECIFIC CITATION TO THE PROVISION OF THIS  
18 SUBSECTION (3) AUTHORIZING THE BODY TO MEET IN AN EXECUTIVE  
19 SESSION AND IDENTIFICATION OF THE PARTICULAR MATTER TO BE  
20 DISCUSSED IN AS MUCH DETAIL AS POSSIBLE WITHOUT COMPROMISING THE  
21 PURPOSE FOR WHICH THE EXECUTIVE SESSION IS AUTHORIZED, and the  
22 affirmative vote of two-thirds of the entire membership of the body after  
23 such announcement, may hold an executive session only at a regular or  
24 special meeting and for the sole purpose of considering any of the matters  
25 enumerated in paragraph (b) of this subsection (3) or the following  
26 matters; except that no adoption of any proposed policy, position,  
27 resolution, rule, regulation, or formal action, EXCEPT THE REVIEW,



1 APPROVAL, AND AMENDMENT OF THE MINUTES OF AN EXECUTIVE SESSION  
2 RECORDED PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (d.5) OF  
3 SUBSECTION (2) OF THIS SECTION, shall occur at any executive session that  
4 is not open to the public:

5 (b) (I) All meetings held by members of a state public body subject  
6 to this part 4 to consider the appointment or employment of a public  
7 official or employee or the dismissal, discipline, promotion, demotion, or  
8 compensation of, or the investigation of charges or complaints against, a  
9 public official or employee shall be open to the public unless said  
10 applicant, official, or employee requests an executive session. Governing  
11 boards of institutions of higher education including the regents of the  
12 university of Colorado may, upon their own affirmative vote, hold  
13 executive sessions to consider the matters listed in this paragraph (b).  
14 Executive sessions may be held to review administrative actions regarding  
15 investigation of charges or complaints and attendant investigative reports  
16 against students where public disclosure could adversely affect the person  
17 or persons involved, unless the students have specifically consented to or  
18 requested the disclosure of such matters. An executive session may be  
19 held only at a regular or special meeting of the state public body and only  
20 upon the announcement by the public body to the public of the topic for  
21 discussion in the executive session and the affirmative vote of two-thirds  
22 of the entire membership of the body after such announcement.

23 (II) THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b)  
24 SHALL NOT APPLY TO DISCUSSIONS CONCERNING ANY MEMBER OF THE  
25 STATE PUBLIC BODY, ANY ELECTED OFFICIAL, OR THE APPOINTMENT OF A  
26 PERSON TO FILL THE OFFICE OF A MEMBER OF THE STATE PUBLIC BODY OR  
27 AN ELECTED OFFICIAL OR TO DISCUSSIONS OF PERSONNEL POLICIES THAT DO

1 NOT REQUIRE THE DISCUSSION OF MATTERS PERSONAL TO PARTICULAR  
2 EMPLOYEES.

3 (4) The members of a local public body subject to this part 4, upon  
4 the announcement by the local public body to the public of the topic for  
5 discussion in the executive session, INCLUDING SPECIFIC CITATION TO THE  
6 PROVISION OF THIS SUBSECTION (4) AUTHORIZING THE BODY TO MEET IN AN  
7 EXECUTIVE SESSION AND IDENTIFICATION OF THE PARTICULAR MATTER TO  
8 BE DISCUSSED IN AS MUCH DETAIL AS POSSIBLE WITHOUT COMPROMISING  
9 THE PURPOSE FOR WHICH THE EXECUTIVE SESSION IS AUTHORIZED, and the  
10 affirmative vote of two-thirds of the quorum present, after such  
11 announcement, may hold an executive session only at a regular or special  
12 meeting and for the sole purpose of considering any of the following  
13 matters; except that no adoption of any proposed policy, position,  
14 resolution, rule, regulation, or formal action, EXCEPT THE REVIEW,  
15 APPROVAL, AND AMENDMENT OF THE MINUTES OF AN EXECUTIVE SESSION  
16 RECORDED PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (d.5) OF  
17 SUBSECTION (2) OF THIS SECTION, shall occur at any executive session that  
18 is not open to the public:

19 (f) (I) Personnel matters except if the employee who is the subject  
20 of the session has requested an open meeting, or if the personnel matter  
21 involves more than one employee, all of the employees have requested an  
22 open meeting. With respect to hearings held pursuant to the "Teacher  
23 Employment, Compensation, and Dismissal Act of 1990", article 63 of  
24 title 22, C.R.S., the provisions of section 22-63-302 (7) (a), C.R.S., shall  
25 govern in lieu of the provisions of this subsection (4).

26 (II) THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (f)  
27 SHALL NOT APPLY TO DISCUSSIONS CONCERNING ANY MEMBER OF THE

1 LOCAL PUBLIC BODY, ANY ELECTED OFFICIAL, OR THE APPOINTMENT OF A  
2 PERSON TO FILL THE OFFICE OF A MEMBER OF THE LOCAL PUBLIC BODY OR  
3 AN ELECTED OFFICIAL OR TO DISCUSSIONS OF PERSONNEL POLICIES THAT DO  
4 NOT REQUIRE THE DISCUSSION OF MATTERS PERSONAL TO PARTICULAR  
5 EMPLOYEES.

6 **SECTION 3.** 24-72-202 (1.3), Colorado Revised Statutes, is  
7 amended to read:

8 **24-72-202. Definitions.** As used in this part 2, unless the context  
9 otherwise requires:

10 (1.3) "Executive position" means any nonelective employment  
11 position ~~with~~ AS THE CHIEF EXECUTIVE OFFICER OF a state agency,  
12 institution, or political subdivision OR AGENCY THEREOF, except  
13 employment positions in the state personnel system or employment  
14 positions in a classified system or civil service system of an institution or  
15 political subdivision.

16 **SECTION 4.** 24-72-204 (3) (a) (XI) (A) and (5), Colorado  
17 Revised Statutes, are amended, and the said 24-72-204 is further amended  
18 BY THE ADDITION OF A NEW SUBSECTION, to read:

19 **24-72-204. Allowance or denial of inspection - grounds -**  
20 **procedure - appeal.** (3) (a) The custodian shall deny the right of  
21 inspection of the following records, unless otherwise provided by law;  
22 except that any of the following records, other than letters of reference  
23 concerning employment, licensing, or issuance of permits, shall be  
24 available to the person in interest under this subsection (3):

25 (XI) (A) Records submitted by or on behalf of an applicant or  
26 candidate for an executive position as defined in section 24-72-202 (1.3)  
27 who is not a finalist. ~~if the applicant or candidate makes a written request~~

1 ~~that the records be kept confidential at the time of submission of the~~  
2 ~~records.~~ For purposes of this subparagraph (XI), "finalist" means an  
3 applicant or candidate for an executive position who is ~~chosen for an~~  
4 ~~interview or who is still being considered for the position twenty-one days~~  
5 ~~prior to making the appointment, whichever comes first; except that, if six~~  
6 ~~or fewer applicants or candidates are competing for the executive position,~~  
7 "finalist" means all applicants or candidates A MEMBER OF THE FINAL  
8 GROUP OF APPLICANTS OR CANDIDATES MADE PUBLIC PURSUANT TO  
9 SECTION 24-6-402 (3.5), AND IF ONLY THREE OR FEWER APPLICANTS  
10 OR CANDIDATES FOR THE EXECUTIVE POSITION POSSESS THE MINIMUM  
11 QUALIFICATIONS FOR THE POSITION, SAID APPLICANTS OR CANDIDATES  
12 SHALL BE CONSIDERED FINALISTS.

13 (5) EXCEPT AS PROVIDED IN SUBSECTION (5.5) OF THIS SECTION,  
14 any person denied the right to inspect any record covered by this part 2  
15 may apply to the district court of the district wherein the record is found  
16 for an order directing the custodian of such record to show cause why ~~he~~  
17 THE CUSTODIAN should not permit the inspection of such record; EXCEPT  
18 THAT, AT LEAST THREE BUSINESS DAYS PRIOR TO FILING AN APPLICATION  
19 WITH THE DISTRICT COURT, THE PERSON WHO HAS BEEN DENIED THE RIGHT  
20 TO INSPECT THE RECORD SHALL FILE A WRITTEN NOTICE WITH THE  
21 CUSTODIAN WHO HAS DENIED THE RIGHT TO INSPECT THE RECORD  
22 INFORMING SAID CUSTODIAN THAT THE PERSON INTENDS TO FILE AN  
23 APPLICATION WITH THE DISTRICT COURT. Hearing on such application  
24 shall be held at the earliest practical time. Unless the court finds that the  
25 denial of the right of inspection was proper, it shall order the custodian to  
26 permit such inspection and ~~upon a finding that the denial was arbitrary or~~  
27 ~~capricious, it may order the custodian personally to pay the applicant's~~

1 ~~court costs and attorney fees in an amount to be determined by the court~~  
2 SHALL AWARD COURT COSTS AND REASONABLE ATTORNEY FEES TO THE  
3 PREVAILING APPLICANT IN AN AMOUNT TO BE DETERMINED BY THE COURT;  
4 EXCEPT THAT NO COURT COSTS AND ATTORNEY FEES SHALL BE AWARDED  
5 TO A PERSON WHO HAS FILED A LAWSUIT AGAINST A STATE PUBLIC BODY OR  
6 LOCAL PUBLIC BODY AND WHO APPLIES TO THE COURT FOR AN ORDER  
7 PURSUANT TO THIS SUBSECTION (5) FOR ACCESS TO RECORDS OF THE STATE  
8 PUBLIC BODY OR LOCAL PUBLIC BODY BEING SUED IF THE COURT FINDS  
9 THAT THE RECORDS BEING SOUGHT ARE RELATED TO THE PENDING  
10 LITIGATION AND ARE DISCOVERABLE PURSUANT TO CHAPTER 4 OF THE  
11 COLORADO RULES OF CIVIL PROCEDURE. IN THE EVENT THE COURT FINDS  
12 THAT THE DENIAL OF THE RIGHT OF INSPECTION WAS PROPER, THE COURT  
13 SHALL AWARD COURT COSTS AND REASONABLE ATTORNEY FEES TO THE  
14 CUSTODIAN IF THE COURT FINDS THAT THE ACTION WAS FRIVOLOUS,  
15 VEXATIOUS, OR GROUNDLESS.

16 (5.5) (a) ANY PERSON SEEKING ACCESS TO THE RECORD OF AN  
17 EXECUTIVE SESSION MEETING OF A STATE PUBLIC BODY OR A LOCAL PUBLIC  
18 BODY RECORDED PURSUANT TO SECTION 24-6-402 (2) (d.5) SHALL, UPON  
19 APPLICATION TO THE DISTRICT COURT FOR THE DISTRICT WHEREIN THE  
20 RECORDS ARE FOUND, SHOW GROUNDS SUFFICIENT TO SUPPORT A  
21 REASONABLE BELIEF THAT THE STATE PUBLIC BODY OR LOCAL PUBLIC BODY  
22 ENGAGED IN SUBSTANTIAL DISCUSSION OF ANY MATTERS NOT ENUMERATED  
23 IN SECTION 24-6-402 (3) OR (4) OR THAT THE STATE PUBLIC BODY OR LOCAL  
24 PUBLIC BODY ADOPTED A PROPOSED POLICY, POSITION, RESOLUTION, RULE,  
25 REGULATION, OR FORMAL ACTION IN THE EXECUTIVE SESSION IN  
26 CONTRAVENTION OF SECTION 24-6-402 (3) (a) OR (4). IF THE APPLICANT  
27 FAILS TO SHOW GROUNDS SUFFICIENT TO SUPPORT SUCH REASONABLE

1 BELIEF, THE COURT SHALL DENY THE APPLICATION AND, IF THE COURT  
2 FINDS THAT THE APPLICATION WAS FRIVOLOUS, VEXATIOUS, OR  
3 GROUNDLESS, THE COURT SHALL AWARD COURT COSTS AND ATTORNEY  
4 FEES TO THE PREVAILING PARTY. IF AN APPLICANT SHOWS GROUNDS  
5 SUFFICIENT TO SUPPORT SUCH REASONABLE BELIEF, THE APPLICANT  
6 CANNOT BE FOUND TO HAVE BROUGHT A FRIVOLOUS, VEXATIOUS, OR  
7 GROUNDLESS ACTION, REGARDLESS OF THE OUTCOME OF THE IN CAMERA  
8 REVIEW.

9 (b) (I) UPON FINDING THAT SUFFICIENT GROUNDS EXIST TO SUPPORT  
10 A REASONABLE BELIEF THAT THE STATE PUBLIC BODY OR LOCAL PUBLIC  
11 BODY ENGAGED IN SUBSTANTIAL DISCUSSION OF ANY MATTERS NOT  
12 ENUMERATED IN SECTION 24-6-402 (3) OR (4) OR THAT THE STATE PUBLIC  
13 BODY OR LOCAL PUBLIC BODY ADOPTED A PROPOSED POLICY, POSITION,  
14 RESOLUTION, RULE, REGULATION, OR FORMAL ACTION IN THE EXECUTIVE  
15 SESSION IN CONTRAVENTION OF SECTION 24-6-402 (3) (a) OR (4), THE  
16 COURT SHALL CONDUCT AN IN CAMERA REVIEW OF THE RECORD OF THE  
17 EXECUTIVE SESSION TO DETERMINE WHETHER THE STATE PUBLIC BODY OR  
18 LOCAL PUBLIC BODY ENGAGED IN SUBSTANTIAL DISCUSSION OF ANY  
19 MATTERS NOT ENUMERATED IN SECTION 24-6-402 (3) OR (4) OR ADOPTED  
20 A PROPOSED POLICY, POSITION, RESOLUTION, RULE, REGULATION, OR  
21 FORMAL ACTION IN THE EXECUTIVE SESSION IN CONTRAVENTION OF  
22 SECTION 24-6-402 (3) (a) OR (4).

23 (II) IF THE COURT DETERMINES, BASED ON THE IN CAMERA REVIEW,  
24 THAT VIOLATIONS OF THE OPEN MEETINGS LAW OCCURRED, THE PORTION  
25 OF THE RECORD OF THE EXECUTIVE SESSION THAT REFLECTS THE  
26 SUBSTANTIAL DISCUSSION OF MATTERS NOT ENUMERATED IN SECTION  
27 24-6-402 (3) OR (4) OR THE ADOPTION OF A PROPOSED POLICY, POSITION,

1 RESOLUTION, RULE, REGULATION, OR FORMAL ACTION SHALL BE OPEN TO  
2 PUBLIC INSPECTION.

3 **SECTION 5.** 24-4-103 (4) (a.5), Colorado Revised Statutes, is  
4 amended to read:

5 **24-4-103. Rule-making - procedure.** (4) (a.5) SUBJECT TO THE  
6 PROVISIONS OF SECTION 24-72-204 (3) (a) (IV), any study or other  
7 documentation utilized by an agency as the basis of a proposed rule shall  
8 be a public document in accordance with the provisions of part 2 of article  
9 72 of this title and shall be open for public inspection. SUBJECT TO THE  
10 PROVISIONS OF SECTION 24-72-204 (3) (a) (IV), all information, including,  
11 but not limited to, THE CONCLUSIONS AND UNDERLYING research data  
12 FROM ANY STUDIES, REPORTS, published papers, and documents, used by  
13 the agency in the development of a proposed rule shall be a public  
14 document in accordance with the provisions of part 2 of article 72 of this  
15 title and shall be open for public inspection.

16 **SECTION 6. Effective date.** This act shall take effect at 12:01  
17 a.m. on the day following the expiration of the ninety-day period after  
18 final adjournment of the general assembly that is allowed for submitting  
19 a referendum petition pursuant to article V, section 1 (3) of the state  
20 constitution; except that, if a referendum petition is filed against this act  
21 or an item, section, or part of this act within such period, then the act,  
22 item, section, or part, if approved by the people, shall take effect on the  
23 date of the official declaration of the vote thereon by proclamation of the  
24 governor.