

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

REVISED

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

LLS NO. 01-0864.01 Christy Chase

HOUSE BILL 01-1359

HOUSE SPONSORSHIP

Mitchell, and Grossman

SENATE SPONSORSHIP

Matsunaka, and Andrews

House Committees

Information & Technology

Senate Committees

Govt, Veterans & Military Relations, & Trans

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.**

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.

SENATE
Amended 2nd Reading
May 4, 2001

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.

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

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

4 **24-6-402. Meetings - open to public.**

5 (2) (d.5) (I) (A) DISCUSSIONS THAT OCCUR IN AN EXECUTIVE SESSION OF
6 A STATE PUBLIC BODY SHALL BE RECORDED IN THE SAME MANNER AND
7 MEDIA THAT THE STATE PUBLIC BODY USES TO RECORD THE MINUTES OF
8 OPEN MEETINGS. A STATE PUBLIC BODY MAY SATISFY THE RECORDING
9 REQUIREMENTS OF THIS SUB-SUBPARAGRAPH (A) BY MAKING ANY FORM OF
10 ELECTRONIC RECORDING OF THE DISCUSSIONS IN AN EXECUTIVE SESSION OF
11 THE STATE PUBLIC BODY. EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (B)
12 OF THIS SUBPARAGRAPH (I), THE RECORD OF AN EXECUTIVE SESSION SHALL
13 REFLECT THE SPECIFIC CITATION TO THE PROVISION IN SUBSECTION (3) OF
14 THIS SECTION THAT AUTHORIZES THE STATE PUBLIC BODY TO MEET IN AN
15 EXECUTIVE SESSION, THE ACTUAL CONTENTS OF THE DISCUSSION DURING
16 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

7 **SECTION 3.** 24-72-204 (3) (a) (XI) (A), (5), and (6) (a),
8 Colorado Revised Statutes, are amended, and the said 24-72-204 is further
9 amended BY THE ADDITION OF A NEW SUBSECTION, to read:

10 **24-72-204. Allowance or denial of inspection - grounds -**
11 **procedure - appeal.** (3) (a) The custodian shall deny the right of
12 inspection of the following records, unless otherwise provided by law;
13 except that any of the following records, other than letters of reference
14 concerning employment, licensing, or issuance of permits, shall be
15 available to the person in interest under this subsection (3):

16 (XI) (A) Records submitted by or on behalf of an applicant or
17 candidate for an executive position as defined in section 24-72-202 (1.3)
18 who is not a finalist. ~~if the applicant or candidate makes a written request~~
19 ~~that the records be kept confidential at the time of submission of the~~
20 ~~records.~~ For purposes of this subparagraph (XI), "finalist" means an
21 applicant or candidate for an executive position AS THE CHIEF EXECUTIVE
22 OFFICER OF A STATE AGENCY, INSTITUTION, OR POLITICAL SUBDIVISION OR
23 AGENCY THEREOF who is ~~chosen for an interview or who is still being~~
24 ~~considered for the position twenty-one days prior to making the~~
25 ~~appointment, whichever comes first; except that, if six or fewer applicants~~
26 ~~or candidates are competing for the executive position, "finalist" means~~
27 ~~all applicants or candidates~~ A MEMBER OF THE FINAL GROUP OF APPLICANTS

1 OR CANDIDATES MADE PUBLIC PURSUANT TO SECTION 24-6-402 (3.5),
2 AND IF ONLY THREE OR FEWER APPLICANTS OR CANDIDATES FOR THE
3 CHIEF EXECUTIVE OFFICER POSITION POSSESS THE MINIMUM
4 QUALIFICATIONS FOR THE POSITION, SAID APPLICANTS OR CANDIDATES
5 SHALL BE CONSIDERED FINALISTS.

6 (5) EXCEPT AS PROVIDED IN SUBSECTION (5.5) OF THIS SECTION,
7 any person denied the right to inspect any record covered by this part 2
8 may apply to the district court of the district wherein the record is found
9 for an order directing the custodian of such record to show cause why ~~he~~
10 THE CUSTODIAN should not permit the inspection of such record; EXCEPT
11 THAT, AT LEAST THREE BUSINESS DAYS PRIOR TO FILING AN APPLICATION
12 WITH THE DISTRICT COURT, THE PERSON WHO HAS BEEN DENIED THE RIGHT
13 TO INSPECT THE RECORD SHALL FILE A WRITTEN NOTICE WITH THE
14 CUSTODIAN WHO HAS DENIED THE RIGHT TO INSPECT THE RECORD
15 INFORMING SAID CUSTODIAN THAT THE PERSON INTENDS TO FILE AN
16 APPLICATION WITH THE DISTRICT COURT. Hearing on such application
17 shall be held at the earliest practical time. Unless the court finds that the
18 denial of the right of inspection was proper, it shall order the custodian to
19 permit such inspection and ~~upon a finding that the denial was arbitrary or~~
20 ~~capricious, it may order the custodian personally to pay the applicant's~~
21 ~~court costs and attorney fees in an amount to be determined by the court~~
22 SHALL AWARD COURT COSTS AND REASONABLE ATTORNEY FEES TO THE
23 PREVAILING APPLICANT IN AN AMOUNT TO BE DETERMINED BY THE COURT;
24 EXCEPT THAT NO COURT COSTS AND ATTORNEY FEES SHALL BE AWARDED
25 TO A PERSON WHO HAS FILED A LAWSUIT AGAINST A STATE PUBLIC BODY OR
26 LOCAL PUBLIC BODY AND WHO APPLIES TO THE COURT FOR AN ORDER
27 PURSUANT TO THIS SUBSECTION (5) FOR ACCESS TO RECORDS OF THE STATE

1 PUBLIC BODY OR LOCAL PUBLIC BODY BEING SUED IF THE COURT FINDS
2 THAT THE RECORDS BEING SOUGHT ARE RELATED TO THE PENDING
3 LITIGATION AND ARE DISCOVERABLE PURSUANT TO CHAPTER 4 OF THE
4 COLORADO RULES OF CIVIL PROCEDURE. IN THE EVENT THE COURT FINDS
5 THAT THE DENIAL OF THE RIGHT OF INSPECTION WAS PROPER, THE COURT
6 SHALL AWARD COURT COSTS AND REASONABLE ATTORNEY FEES TO THE
7 CUSTODIAN IF THE COURT FINDS THAT THE ACTION WAS FRIVOLOUS,
8 VEXATIOUS, OR GROUNDLESS.

9 (5.5) (a) ANY PERSON SEEKING ACCESS TO THE RECORD OF AN
10 EXECUTIVE SESSION MEETING OF A STATE PUBLIC BODY OR A LOCAL PUBLIC
11 BODY RECORDED PURSUANT TO SECTION 24-6-402 (2) (d.5) SHALL, UPON
12 APPLICATION TO THE DISTRICT COURT FOR THE DISTRICT WHEREIN THE
13 RECORDS ARE FOUND, SHOW GROUNDS SUFFICIENT TO SUPPORT A
14 REASONABLE BELIEF THAT THE STATE PUBLIC BODY OR LOCAL PUBLIC BODY
15 ENGAGED IN SUBSTANTIAL DISCUSSION OF ANY MATTERS NOT ENUMERATED
16 IN SECTION 24-6-402 (3) OR (4) OR THAT THE STATE PUBLIC BODY OR LOCAL
17 PUBLIC BODY ADOPTED A PROPOSED POLICY, POSITION, RESOLUTION, RULE,
18 REGULATION, OR FORMAL ACTION IN THE EXECUTIVE SESSION IN
19 CONTRAVENTION OF SECTION 24-6-402 (3) (a) OR (4). IF THE APPLICANT
20 FAILS TO SHOW GROUNDS SUFFICIENT TO SUPPORT SUCH REASONABLE
21 BELIEF, THE COURT SHALL DENY THE APPLICATION AND, IF THE COURT
22 FINDS THAT THE APPLICATION WAS FRIVOLOUS, VEXATIOUS, OR
23 GROUNDLESS, THE COURT SHALL AWARD COURT COSTS AND ATTORNEY
24 FEES TO THE PREVAILING PARTY. IF AN APPLICANT SHOWS GROUNDS
25 SUFFICIENT TO SUPPORT SUCH REASONABLE BELIEF, THE APPLICANT
26 CANNOT BE FOUND TO HAVE BROUGHT A FRIVOLOUS, VEXATIOUS, OR
27 GROUNDLESS ACTION, REGARDLESS OF THE OUTCOME OF THE IN CAMERA

1 REVIEW.

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

16 (II) IF THE COURT DETERMINES, BASED ON THE IN CAMERA REVIEW,
17 THAT VIOLATIONS OF THE OPEN MEETINGS LAW OCCURRED, THE PORTION
18 OF THE RECORD OF THE EXECUTIVE SESSION THAT REFLECTS THE
19 SUBSTANTIAL DISCUSSION OF MATTERS NOT ENUMERATED IN SECTION
20 24-6-402 (3) OR (4) OR THE ADOPTION OF A PROPOSED POLICY, POSITION,
21 RESOLUTION, RULE, REGULATION, OR FORMAL ACTION SHALL BE OPEN TO
22 PUBLIC INSPECTION.

23 (6) (a) If, in the opinion of the official custodian of any public
24 record, disclosure of the contents of said record would do substantial
25 injury to the public interest, notwithstanding the fact that said record
26 might otherwise be available to public inspection OR IF THE OFFICIAL
27 CUSTODIAN IS UNABLE, IN GOOD FAITH, AFTER EXERCISING REASONABLE

1 DILIGENCE, AND AFTER REASONABLE INQUIRY, TO DETERMINE IF
2 DISCLOSURE OF THE PUBLIC RECORD IS PROHIBITED PURSUANT TO THIS PART
3 2, the official custodian may apply to the district court of the district in
4 which such record is located for an order permitting him or her to restrict
5 such disclosure OF FOR THE COURT TO DETERMINE IF DISCLOSURE IS
6 PROHIBITED. Hearing on such application shall be held at the earliest
7 practical time. IN THE CASE OF A RECORD THAT IS OTHERWISE AVAILABLE
8 TO PUBLIC INSPECTION PURSUANT TO THIS PART 2, after A hearing, the court
9 may, ~~issue such an order~~ upon a finding that disclosure would cause
10 substantial injury to the public interest, ISSUE AN ORDER AUTHORIZING THE
11 OFFICIAL CUSTODIAN TO RESTRICT DISCLOSURE. IN THE CASE OF A RECORD
12 THAT MAY BE PROHIBITED FROM DISCLOSURE PURSUANT TO THIS PART 2,
13 AFTER A HEARING, THE COURT MAY, UPON A FINDING THAT DISCLOSURE OF
14 THE RECORD IS PROHIBITED, ISSUE AN ORDER DIRECTING THE OFFICIAL
15 CUSTODIAN NOT TO DISCLOSE THE RECORD TO THE PUBLIC. In such AN
16 action BROUGHT PURSUANT TO THIS PARAGRAPH (a), the burden of proof
17 shall be upon the custodian. The person seeking permission to examine
18 the record shall have notice of said hearing served upon him or her in the
19 manner provided for service of process by the Colorado rules of civil
20 procedure and shall have the right to appear and be heard. THE ATTORNEY
21 FEES PROVISION OF SUBSECTION (5) OF THIS SECTION SHALL NOT APPLY IN
22 CASES BROUGHT PURSUANT TO THIS PARAGRAPH (a) BY AN OFFICIAL
23 CUSTODIAN WHO IS UNABLE TO DETERMINE IF DISCLOSURE OF A PUBLIC
24 RECORD IS PROHIBITED UNDER THIS PART 2 IF THE OFFICIAL CUSTODIAN
25 PROVES AND THE COURT FINDS THAT THE CUSTODIAN, IN GOOD FAITH,
26 AFTER EXERCISING REASONABLE DILIGENCE, AND AFTER MAKING
27 REASONABLE INQUIRY, WAS UNABLE TO DETERMINE IF DISCLOSURE OF THE

1 PUBLIC RECORD WAS PROHIBITED WITHOUT A RULING BY THE COURT.

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

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

15 **SECTION 5. Effective date.** This act shall take effect at 12:01
16 a.m. on the day following the expiration of the ninety-day period after
17 final adjournment of the general assembly that is allowed for submitting
18 a referendum petition pursuant to article V, section 1 (3) of the state
19 constitution; except that, if a referendum petition is filed against this act
20 or an item, section, or part of this act within such period, then the act,
21 item, section, or part, if approved by the people, shall take effect on the
22 date of the official declaration of the vote thereon by proclamation of the
23 governor.