

**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**

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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.*

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. EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (I), THE MINUTES 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 AND THE ACTUAL CONTENTS OF THE DISCUSSION DURING THE SESSION.

(B) IF, IN THE OPINION OF THE ATTORNEY WHO IS REPRESENTING THE STATE PUBLIC BODY AND IS IN ATTENDANCE AT THE EXECUTIVE SESSION, ALL OR A PORTION OF THE DISCUSSION DURING THE EXECUTIVE

1 SESSION CONSTITUTES A PRIVILEGED ATTORNEY-CLIENT COMMUNICATION,  
2 NO RECORD OR MINUTES SHALL BE REQUIRED TO BE KEPT OF THE PART OF  
3 THE DISCUSSION THAT CONSTITUTES A PRIVILEGED ATTORNEY-CLIENT  
4 COMMUNICATION. THE MINUTES OF SAID EXECUTIVE SESSION DISCUSSION  
5 SHALL REFLECT THE TOPIC OF DISCUSSION IN THE SAME MANNER AS  
6 DESCRIBED IN SUBPARAGRAPH (I) OF PARAGRAPH (d) OF THIS SUBSECTION  
7 (2) AND SHALL REFLECT THAT NO FURTHER RECORD WAS KEPT OF THE  
8 DISCUSSION BASED ON THE OPINION OF THE ATTORNEY REPRESENTING THE  
9 STATE PUBLIC BODY, AS STATED FOR THE RECORD DURING THE EXECUTIVE  
10 SESSION, THAT THE DISCUSSION CONSTITUTES A PRIVILEGED  
11 ATTORNEY-CLIENT COMMUNICATION.

12 (C) IF A COURT FINDS, UPON APPLICATION OF A PERSON SEEKING  
13 ACCESS TO THE MINUTES OF THE EXECUTIVE SESSION OF A STATE PUBLIC  
14 BODY IN ACCORDANCE WITH SECTION 24-72-204 (5.5) AND AFTER AN IN  
15 CAMERA REVIEW OF THE MINUTES OF THE EXECUTIVE SESSION, THAT THE  
16 STATE PUBLIC BODY ENGAGED IN SUBSTANTIAL DISCUSSION OF ANY  
17 MATTERS NOT ENUMERATED IN SUBSECTION (3) OF THIS SECTION OR THAT  
18 THE BODY ADOPTED A PROPOSED POLICY, POSITION, RESOLUTION, RULE,  
19 REGULATION, OR FORMAL ACTION IN THE EXECUTIVE SESSION IN  
20 CONTRAVENTION OF PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION,  
21 THE PORTION OF THE MINUTES OF THE EXECUTIVE SESSION THAT REFLECT  
22 THE SUBSTANTIAL DISCUSSION OF MATTERS NOT ENUMERATED IN  
23 SUBSECTION (3) OF THIS SECTION OR THE ADOPTION OF A PROPOSED POLICY,  
24 POSITION, RESOLUTION, RULE, REGULATION, OR FORMAL ACTION SHALL BE  
25 OPEN TO PUBLIC INSPECTION PURSUANT TO SECTION 24-72-204 (5.5).

26 (D) NO PORTION OF THE MINUTES OF AN EXECUTIVE SESSION OF A  
27 STATE PUBLIC BODY SHALL BE OPEN FOR PUBLIC INSPECTION OR AVAILABLE

1 FOR USE IN ANY JUDICIAL PROCEEDING EXCEPT AS PROVIDED IN  
2 SUB-SUBPARAGRAPH (C) OF THIS SUBPARAGRAPH (I) AND SECTION  
3 24-72-204 (5.5).

4 (II) (A) DISCUSSIONS THAT OCCUR IN AN EXECUTIVE SESSION OF A  
5 LOCAL PUBLIC BODY SHALL BE RECORDED IN THE SAME MANNER AND  
6 MEDIA THAT THE LOCAL PUBLIC BODY USES TO RECORD THE MINUTES OF  
7 OPEN MEETINGS. EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (B) OF THIS  
8 SUBPARAGRAPH (II), THE MINUTES OF AN EXECUTIVE SESSION SHALL  
9 REFLECT THE SPECIFIC CITATION TO THE PROVISION IN SUBSECTION (4) OF  
10 THIS SECTION THAT AUTHORIZES THE LOCAL PUBLIC BODY TO MEET IN AN  
11 EXECUTIVE SESSION AND THE ACTUAL CONTENTS OF THE DISCUSSION  
12 DURING THE SESSION. THE PROVISIONS OF THIS SUB-SUBPARAGRAPH (A)  
13 SHALL NOT APPLY TO DISCUSSIONS OF INDIVIDUAL STUDENTS BY A LOCAL  
14 PUBLIC BODY PURSUANT TO PARAGRAPH (h) OF SUBSECTION (4) OF THIS  
15 SECTION.

16 (B) IF, IN THE OPINION OF THE ATTORNEY WHO IS REPRESENTING  
17 THE LOCAL PUBLIC BODY AND WHO IS IN ATTENDANCE AT THE EXECUTIVE  
18 SESSION, ALL OR A PORTION OF THE DISCUSSION DURING THE EXECUTIVE  
19 SESSION CONSTITUTES A PRIVILEGED ATTORNEY-CLIENT COMMUNICATION,  
20 NO RECORD OR MINUTES SHALL BE REQUIRED TO BE KEPT OF THE PART OF  
21 THE DISCUSSION THAT CONSTITUTES A PRIVILEGED ATTORNEY-CLIENT  
22 COMMUNICATION. THE MINUTES OF SAID EXECUTIVE SESSION DISCUSSION  
23 SHALL REFLECT THE TOPIC OF DISCUSSION IN THE SAME MANNER AS  
24 DESCRIBED IN SUBPARAGRAPH (II) OF PARAGRAPH (d) OF THIS SUBSECTION  
25 (2) AND SHALL REFLECT THAT NO FURTHER RECORD WAS KEPT OF THE  
26 DISCUSSION BASED ON THE OPINION OF THE ATTORNEY REPRESENTING THE  
27 LOCAL PUBLIC BODY, AS STATED FOR THE RECORD DURING THE EXECUTIVE

1 SESSION, THAT THE DISCUSSION CONSTITUTES A PRIVILEGED  
2 ATTORNEY-CLIENT COMMUNICATION.

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

17 (D) NO PORTION OF THE MINUTES OF AN EXECUTIVE SESSION OF A  
18 LOCAL PUBLIC BODY SHALL BE OPEN FOR PUBLIC INSPECTION OR  
19 AVAILABLE FOR USE IN ANY JUDICIAL PROCEEDING EXCEPT AS PROVIDED IN  
20 SUB-SUBPARAGRAPH (C) OF THIS SUBPARAGRAPH (II) AND SECTION  
21 24-72-204 (5.5).

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

25 **24-6-402. Meetings - open to public.** (3) (a) The members of a  
26 state public body subject to this part 4, upon the announcement by the  
27 state public body to the public of the topic for discussion in the executive

1 session, INCLUDING SPECIFIC CITATION TO THE PROVISION OF THIS  
2 SUBSECTION (3) AUTHORIZING THE BODY TO MEET IN AN EXECUTIVE  
3 SESSION AND IDENTIFICATION OF THE PARTICULAR MATTER TO BE  
4 DISCUSSED IN AS MUCH DETAIL AS POSSIBLE WITHOUT COMPROMISING THE  
5 PURPOSE FOR WHICH THE EXECUTIVE SESSION IS AUTHORIZED, and the  
6 affirmative vote of two-thirds of the entire membership of the body after  
7 such announcement, may hold an executive session only at a regular or  
8 special meeting and for the sole purpose of considering any of the matters  
9 enumerated in paragraph (b) of this subsection (3) or the following  
10 matters; except that no adoption of any proposed policy, position,  
11 resolution, rule, regulation, or formal action shall occur at any executive  
12 session that is not open to the public:

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

1 upon the announcement by the public body to the public of the topic for  
2 discussion in the executive session and the affirmative vote of two-thirds  
3 of the entire membership of the body after such announcement.

4 (II) THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b)  
5 SHALL NOT APPLY TO DISCUSSIONS CONCERNING ANY MEMBER OF THE  
6 STATE PUBLIC BODY, ANY ELECTED OFFICIAL, OR THE APPOINTMENT OF A  
7 PERSON TO FILL THE OFFICE OF A MEMBER OF THE STATE PUBLIC BODY OR  
8 AN ELECTED OFFICIAL OR TO DISCUSSIONS OF PERSONNEL POLICIES THAT DO  
9 NOT REQUIRE THE DISCUSSION OF MATTERS PERSONAL TO PARTICULAR  
10 EMPLOYEES.

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

24 (f) (I) Personnel matters except if the employee who is the subject  
25 of the session has requested an open meeting, or if the personnel matter  
26 involves more than one employee, all of the employees have requested an  
27 open meeting. With respect to hearings held pursuant to the "Teacher



1 Employment, Compensation, and Dismissal Act of 1990", article 63 of  
2 title 22, C.R.S., the provisions of section 22-63-302 (7) (a), C.R.S., shall  
3 govern in lieu of the provisions of this subsection (4).

4 (II) THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (f)  
5 SHALL NOT APPLY TO DISCUSSIONS CONCERNING ANY MEMBER OF THE  
6 LOCAL PUBLIC BODY, ANY ELECTED OFFICIAL, OR THE APPOINTMENT OF A  
7 PERSON TO FILL THE OFFICE OF A MEMBER OF THE LOCAL PUBLIC BODY OR  
8 AN ELECTED OFFICIAL OR TO DISCUSSIONS OF PERSONNEL POLICIES THAT DO  
9 NOT REQUIRE THE DISCUSSION OF MATTERS PERSONAL TO PARTICULAR  
10 EMPLOYEES.

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

13 **24-72-202. Definitions.** As used in this part 2, unless the context  
14 otherwise requires:

15 (1.3) "Executive position" means any nonelective employment  
16 position ~~with~~ AS THE CHIEF EXECUTIVE OFFICER OF a state agency,  
17 institution, or political subdivision. ~~except employment positions in the~~  
18 ~~state personnel system or employment positions in a classified system or~~  
19 ~~civil service system of an institution or political subdivision.~~

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

23 **24-72-204. Allowance or denial of inspection - grounds -**  
24 **procedure - appeal.** (3) (a) The custodian shall deny the right of  
25 inspection of the following records, unless otherwise provided by law;  
26 except that any of the following records, other than letters of reference  
27 concerning employment, licensing, or issuance of permits, shall be

1 available to the person in interest under this subsection (3):

2 (XI) (A) Records submitted by or on behalf of an applicant or  
3 candidate for an executive position as defined in section 24-72-202 (1.3)  
4 who is not a finalist. ~~if the applicant or candidate makes a written request~~  
5 ~~that the records be kept confidential at the time of submission of the~~  
6 ~~records.~~ For purposes of this subparagraph (XI), "finalist" means an  
7 applicant or candidate for an executive position who is ~~chosen for an~~  
8 ~~interview or who is still being considered for the position twenty-one days~~  
9 ~~prior to making the appointment, whichever comes first, except that, if six~~  
10 ~~or fewer applicants or candidates are competing for the executive position,~~  
11 ~~"finalist" means all applicants or candidates~~ A MEMBER OF THE FINAL  
12 GROUP OF APPLICANTS OR CANDIDATES FROM WHICH THE APPOINTMENT IS  
13 MADE, AND IF ONLY THREE OR FEWER APPLICANTS OR CANDIDATES FOR THE  
14 EXECUTIVE POSITION POSSESS THE MINIMUM QUALIFICATIONS FOR THE  
15 POSITION, SAID APPLICANTS OR CANDIDATES SHALL BE CONSIDERED  
16 FINALISTS.

17 (5) EXCEPT AS PROVIDED IN SUBSECTION (5.5) OF THIS SECTION,  
18 any person denied the right to inspect any record covered by this part 2  
19 may apply to the district court of the district wherein the record is found  
20 for an order directing the custodian of such record to show cause why ~~he~~  
21 ~~THE CUSTODIAN~~ should not permit the inspection of such record. Hearing  
22 on such application shall be held at the earliest practical time. Unless the  
23 court finds that the denial of the right of inspection was proper, it shall  
24 order the custodian to permit such inspection and ~~upon a finding that the~~  
25 ~~denial was arbitrary or capricious, it may order the custodian personally~~  
26 ~~to pay the applicant's court costs and attorney fees in an amount to be~~  
27 ~~determined by the court~~ SHALL AWARD COURT COSTS AND REASONABLE

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

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

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

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

21 (II) IF THE COURT DETERMINES, BASED ON THE IN CAMERA REVIEW,  
22 THAT VIOLATIONS OF THE OPEN MEETINGS LAW OCCURRED, THE PORTION  
23 OF THE MINUTES OF THE EXECUTIVE SESSION THAT REFLECT THE  
24 SUBSTANTIAL DISCUSSION OF MATTERS NOT ENUMERATED IN SECTION  
25 24-6-402 (3) OR (4) OR THE ADOPTION OF A PROPOSED POLICY, POSITION,  
26 RESOLUTION, RULE, REGULATION, OR FORMAL ACTION SHALL BE OPEN TO  
27 PUBLIC INSPECTION AS PROVIDED IN SECTION 24-6-402 (2) (d.5) (I) (C) OR

1 (2) (d.5) (II) (C).

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

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

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