

Colorado Legislative Council Staff
NO FISCAL IMPACT

Drafting Number: LLS 01-0864	Date: March 24, 2001
Prime Sponsor(s): Rep. Mitchell Sen. Matsunaka	Bill Status: House Information and Technology Fiscal Analyst: Geoff Barsch (303-866-4102)

TITLE: CONCERNING PUBLIC ACCESS TO INFORMATION, AND, IN CONNECTION THEREWITH, PROVIDING FOR PUBLIC ACCESS TO INFORMATION DISCUSSED IN CERTAIN MEETINGS OF PUBLIC BODIES AND PROVIDING REMEDIES AND PENALTIES FOR VIOLATIONS OF THE OPEN MEETINGS LAW AND THE OPEN RECORDS ACT.

Summary of Assessment

The bill makes the following changes to the Open Meetings Law:

- Specifies that state and local public bodies are not authorized to meet in an executive session to discuss personnel matters that concern a member of the body or an elected official, the appointment of a person as a member of the body or an elected official, or personnel policies that do not include matters personal to particular employees;
- Requires a state or local public body to reference the statute authorizing the body to conduct an executive session and identify the matter to be discussed in the public announcement concerning the executive session;
- Requires executive session discussions, except discussions by a local public body concerning students, to be recorded in the same manner and media as open meetings. Minutes must reference the statutory citation authorizing the executive session and the actual content of the discussion, unless an attorney representing the public body determines the discussions constitute privileged attorney-client communication; and
- Specifies that no portion of the minutes of an executive session shall be open to public inspection unless a court finds, after an *in camera* review of the session minutes, that the executive session was held in violation of the open meetings law. Authorizes the court to award court costs and attorney fees to the custodian of the records if an applicant seeking access to the minutes of an executive session fails to show sufficient grounds that access should be granted.

The bill makes the following changes to the Open Records Act:

- Under current law, records submitted by applicants for an executive position are considered public records. This bill 1) specifies that "executive position" means only the position as the chief executive officer of a state agency, institution, or

political subdivision; 2) specifies that a finalist is a member of the final group from which the appointment is made; 3) eliminates the requirement that non-finalists make a written request to avoid release of application records to the public; and 4) specifies that all applicants are finalists if three or fewer meet the minimum qualifications for the position.

- With regard to liability for court costs, the bill authorizes an award of court costs and reasonable attorney fees to the applicant seeking access if the court finds that the denial of access was improper. The court may award court costs and reasonable attorney fees to the custodian of the records if the court finds that the denial of access was proper and the action seeking access was frivolous, vexatious, or groundless. No court costs and attorney fees may be awarded if the records being sought are related to pending litigation and can be obtained through the discovery process authorized by the Colorado rules of civil procedure. The bill eliminates the personal liability of a custodian who denies the right of inspection of a public record.

The bill will take effect 90 days after adjournment unless a referendum petition is filed.

This bill is assessed as having no fiscal impact. Most agencies indicate that few executive session meetings are held in a given year. Agencies will be able to absorb the costs for recording the proceedings of executive session meetings within existing resources. Some agencies may request the advice of the Attorney General's Office before conducting an executive session meeting under the bill. However, no agency is required to do so, and no additional appropriation is required.

Departments Contacted

All State Departments

Colorado Municipal League