

CLHB1036.003

5.9.12

FIRST REPORT OF FIRST CONFERENCE COMMITTEE
ON HB12-1036

THIS REPORT AMENDS THE
BILL

To the President of the Senate and the
Speaker of the House of Representatives:

Your first conference committee appointed on HB12-1036, concerning clarification of the exemption from the "Colorado Open Records Act" for investigative files, has met and reports that it has agreed upon the following:

1. That the House accede to the Senate amendments made to the bill, as the amendments appear in the rerevised bill.
2. That, under the authority granted the committee to consider matters not at issue between the two houses, the following amendments be recommended:

Amend rerevised bill, page 3, after line 7 insert:

"SECTION 2. In Colorado Revised Statutes, add 24-72-205.5 as follows:

24-72-205.5. Public inspection of ballots - stay period - exception to stay for recounts - rules governing public inspection of ballots - legislative declaration - definitions. (1) (a) BY ENACTING THIS SECTION, THE GENERAL ASSEMBLY INTENDS TO PERMIT THE INSPECTION OF BALLOTS UNDER THE CONDITIONS SPECIFIED IN THIS SECTION AND TO PROTECT THE INTEGRITY OF THE ELECTION PROCESS WHILE PROTECTING VOTER PRIVACY AND PRESERVING SECRECY IN VOTING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 8 OF ARTICLE VII OF THE STATE CONSTITUTION.

(b) IN ORDER TO FACILITATE AND ENSURE A CONSISTENT APPLICATION OF THE PROVISIONS OF THIS SECTION ACROSS THE STATE, THE

MATTERS ADDRESSED IN THIS SECTION ARE MATTERS OF STATEWIDE CONCERN.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "BALLOT" MEANS A BALLOT VOTED BY ANY ACCEPTABLE, APPLICABLE, OR LEGAL METHOD THAT IS IN THE CUSTODY OF AN ELECTION OFFICIAL. "BALLOT" INCLUDES ANY DIGITAL IMAGE OR ELECTRONIC REPRESENTATION OF VOTES CAST.

(b) "DESIGNATED ELECTION OFFICIAL" HAS THE SAME MEANING AS SET FORTH IN SECTION 1-1-104 (8), C.R.S.

(c) "INTERESTED PARTY" MEANS:

(I) ANY CANDIDATE WHO WAS IN AN ELECTION CONTEST THAT IS THE SUBJECT OF A RECOUNT OR THE POLITICAL PARTY OR POLITICAL ORGANIZATION AS DEFINED IN SECTION 1-1-104 (24), C.R.S., OF SUCH CANDIDATE;

(II) ANY PETITION REPRESENTATIVE IDENTIFIED PURSUANT TO SECTION 1-40-113 OR 31-11-106 (2), C.R.S., AS APPLICABLE, IN CONNECTION WITH A BALLOT ISSUE OR BALLOT QUESTION THAT IS THE SUBJECT OF THE RECOUNT;

(III) THE GOVERNING BODY THAT REFERRED A BALLOT QUESTION OR BALLOT ISSUE TO THE ELECTORATE THAT IS THE SUBJECT OF THE RECOUNT; OR

(IV) THE AGENT OF AN ISSUE COMMITTEE THAT IS REQUIRED TO REPORT CONTRIBUTIONS PURSUANT TO THE "FAIR CAMPAIGN PRACTICES ACT", ARTICLE 45 OF TITLE 1, C.R.S., THAT EITHER SUPPORTED OR OPPOSED A BALLOT QUESTION OR BALLOT ISSUE THAT IS THE SUBJECT OF THE RECOUNT.

(3) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (3), THE DESIGNATED ELECTION OFFICIAL SHALL NOT FULFILL A REQUEST UNDER THIS PART 2 FOR THE PUBLIC INSPECTION OF BALLOTS DURING THE PERIOD COMMENCING WITH THE FORTY-FIFTH DAY PRECEDING ELECTION DAY AND CONCLUDING WITH THE DATE EITHER BY WHICH THE DESIGNATED ELECTION OFFICIAL IS REQUIRED TO CERTIFY AN OFFICIAL ABSTRACT OF VOTES CAST FOR THE APPLICABLE CANDIDATE CONTEST OR BALLOT ISSUE OR BALLOT QUESTION PURSUANT TO SECTION 1-10-102 OR 31-10-1205 (1), C.R.S., AS APPLICABLE, OR BY WHICH ANY RECOUNT CONDUCTED IN ACCORDANCE WITH ARTICLE 10.5 OF TITLE 1, C.R.S., OR SECTION 31-10-1207, C.R.S., IS COMPLETED, AS APPLICABLE, WHICHEVER DATE IS LATER. THE DENIAL OF PUBLIC INSPECTION OF BALLOTS AUTHORIZED PURSUANT TO THIS PARAGRAPH (a) SHALL ALSO

APPLY TO ANY INTERNAL BATCH REPORTS GENERATED BY A DESIGNATED ELECTION OFFICIAL FOR THE SPECIFIC PURPOSE OF AUDITING BALLOTS RECEIVED IN THE COURSE OF CONDUCTING AN ELECTION.

(b) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE DENIAL OF PUBLIC INSPECTION OF BALLOTS AUTHORIZED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3) SHALL APPLY TO A RECOUNT THAT IS CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 10.5 OF TITLE 1, C.R.S., OR SECTION 31-10-1207, C.R.S., AS APPLICABLE; EXCEPT THAT, DURING THE PERIOD DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (3), AN INTERESTED PARTY MAY INSPECT AND REQUEST COPIES OF BALLOTS IN CONNECTION WITH SUCH RECOUNT WITHOUT HAVING TO OBTAIN A COURT ORDER GRANTING SUCH INSPECTION. IN CONNECTION WITH AN INSPECTION BY AN INTERESTED PARTY AS AUTHORIZED BY THIS PARAGRAPH (b), AN INTERESTED PARTY MAY WITNESS THE HANDLING OF BALLOTS INVOLVED IN THE RECOUNT TO VERIFY THAT THE RECOUNT IS BEING CONDUCTED IN A FAIR, IMPARTIAL, AND UNIFORM MANNER SO AS TO DETERMINE THAT ALL BALLOTS THAT HAVE BEEN CAST ARE ACCURATELY INTERPRETED AND COUNTED; EXCEPT THAT AN INTERESTED PARTY IS NOT PERMITTED TO HANDLE THE ORIGINAL BALLOTS. EXCEPT AS SPECIFIED IN THIS PARAGRAPH (b), NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT AN INTERESTED PARTY FROM REQUESTING COPIES OF BALLOTS IN CONNECTION WITH A RECOUNT, TO AFFECT THE CONDUCT OF A RECOUNT, OR TO AFFECT THE RIGHTS OF AN INTERESTED PARTY IN CONNECTION WITH A RECOUNT.

(c) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, NOTHING IN THIS SECTION SHALL BE CONSTRUED TO RESTRICT THE PUBLIC INSPECTION OF ELECTION RECORDS AS DEFINED IN SECTION 1-1-104 (11), C.R.S.; EXCEPT THAT, FOR PURPOSES OF THIS SECTION, ELECTION RECORDS SHALL NOT INCLUDE BALLOTS.

(4) (a) IN ACCORDANCE WITH THE PROVISIONS OF SECTION 24-72-203 (1) (a) AND IN ADDITION TO ANY OTHER REQUIREMENTS THAT ARE APPLICABLE TO A PERSON REQUESTING THE INSPECTION OF PUBLIC RECORDS UNDER THIS PART 2, PRIOR TO AND LATER THAN THE STAY PERIOD DESCRIBED IN PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION, BALLOTS SHALL BE AVAILABLE FOR INSPECTION BY THE PUBLIC IN ACCORDANCE WITH THE REQUIREMENTS OF THIS PART 2.

(b) IN CONNECTION WITH THE PUBLIC INSPECTION OF THE BALLOTS TO WHICH THIS SECTION PERTAINS:

(I) THE ORIGINAL BALLOTS SHALL AT ALL TIMES REMAIN IN THE CUSTODY OF THE DESIGNATED ELECTION OFFICIAL OR HIS OR HER

DESIGNEE. IN THE DISCRETION OF THE DESIGNATED ELECTION OFFICIAL OR HIS OR HER DESIGNEE, AND SUBJECT TO THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (4) AND THIS PART 2, THE DESIGNATED ELECTION OFFICIAL OR HIS OR HER DESIGNEE SHALL DETERMINE THE MANNER IN WHICH SUCH BALLOTS MAY BE VIEWED BY THE PUBLIC.

(II) THE DESIGNATED ELECTION OFFICIAL OR HIS OR HER DESIGNEE SHALL COVER OR REDACT, BASED UPON THE MOST PRACTICAL MEANS AVAILABLE, ANY MARKINGS OR MESSAGE ON A BALLOT THAT MAY IDENTIFY THE PARTICULAR ELECTOR WHO CAST THE BALLOT BEFORE THE BALLOT MAY BE MADE AVAILABLE FOR PUBLIC INSPECTION;

(III) TO PROTECT THE PRIVACY OF PARTICULAR ELECTORS, ANY BALLOTS CAST BY ELECTORS WITHIN GROUPS OF DISCRETE INDIVIDUALS WHO ARE MORE SUSCEPTIBLE OF BEING PERSONALLY IDENTIFIED, SUCH AS MILITARY AND OVERSEAS ELECTORS, SHALL BE MADE AVAILABLE FOR PUBLIC INSPECTION ONLY TO THE EXTENT SUCH BALLOTS MAY BE DUPLICATED WITHOUT IDENTIFYING ELECTOR INFORMATION. INsofar AS SUCH BALLOTS ARE NOT ABLE TO BE DUPLICATED WITHOUT IDENTIFYING ELECTOR INFORMATION, THEY ARE NOT AVAILABLE FOR PUBLIC INSPECTION. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, NO BALLOT, OR ANY PORTION THEREOF, MAY BE MADE AVAILABLE FOR INSPECTION WHERE THE BALLOT, OR ANY REQUESTED PORTION THEREOF, IS IDENTICAL IN PRINTED FORM, CONSIDERING A COMBINATION OF THE ELECTION CONTESTS AT ISSUE AND PRECINCT CODING, TO ONLY NINE OR FEWER BALLOTS, OR COMPARABLE PORTIONS THEREOF, AMONG ALL BALLOTS USED IN THE SAME ELECTION. HOWEVER, ANY SUCH BALLOT, OR ANY REQUESTED PORTION THEREOF, THAT IS IDENTICAL IN PRINTED FORM TO TEN OR MORE BALLOTS, OR COMPARABLE PORTIONS THEREOF, USED IN THE SAME ELECTION MAY BE INSPECTED.

(IV) TO PROTECT THE PRIVACY OF PARTICULAR ELECTORS, BALLOTS MADE AVAILABLE FOR INSPECTION MAY BE PRESENTED IN RANDOM ORDER SELECTED BY THE DESIGNATED ELECTION OFFICIAL OR HIS OR HER DESIGNEE;

(V) FOR THE PURPOSE OF MINIMIZING THE COSTS OF MAKING BALLOTS AVAILABLE FOR PUBLIC INSPECTION, THE PERSON SEEKING THE INSPECTION MAY INDICATE THE CANDIDATE CONTEST, BALLOT ISSUE, OR BALLOT QUESTION FOR WHICH THE PERSON SEEKS TO INSPECT THE BALLOTS; AND

(VI) ANY ACTUAL COSTS INCURRED BY THE OFFICE OF THE DESIGNATED ELECTION OFFICIAL IN MAKING THE BALLOTS AVAILABLE FOR INSPECTION IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION

MAY BE CHARGED TO THE PERSON REQUESTING INSPECTION OF THE BALLOTS. IF THE DESIGNATED ELECTION OFFICIAL SELECTS A PERSON OTHER THAN AN EMPLOYEE OF HIS OR HER OFFICE TO CONDUCT THE DUTIES REQUIRED BY THIS SECTION, THE ACTUAL COSTS TO BE CHARGED THE PERSON SEEKING INSPECTION SHALL NOT EXCEED THE ACTUAL COSTS THAT WOULD HAVE BEEN INCURRED IF THE WORK INVOLVED IN COMPLYING WITH THE REQUIREMENTS OF THIS SECTION WAS COMPLETED BY AN EMPLOYEE OF THE DESIGNATED ELECTION OFFICIAL.

(5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, NOTHING IN THIS SECTION AFFECTS EITHER THE RIGHTS OF A WATCHER SET FORTH IN THE PROVISIONS OF TITLES 1 AND 31, C.R.S., OR THE OPERATION OF A CANVASS BOARD IN ACCORDANCE WITH THE PROVISIONS OF ARTICLES 1 TO 13 OF TITLE 1, C.R.S.

SECTION 3. In Colorado Revised Statutes, 1-8-104.5, add (3) and (4) as follows:

1-8-104.5. Application for permanent mail-in voter status - legislative declaration. (3) (a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ANY ELIGIBLE ELECTOR WHOSE REGISTRATION RECORD HAS BEEN MARKED AS "INACTIVE - FAILED TO VOTE", WHOSE STATUS HAS BEEN CHANGED TO ACTIVE IN ACCORDANCE WITH SECTION 1-2-229, AND WHO HAD PREVIOUSLY SELECTED PERMANENT MAIL-IN VOTER STATUS PURSUANT TO THE REQUIREMENTS OF THIS SECTION SHALL HAVE THE STATUS OF PERMANENT MAIL-IN VOTER RESTORED AS OF THE EFFECTIVE DATE OF THIS SUBSECTION (3).

(b) BY AUGUST 1, 2012, THE SECRETARY OF STATE SHALL UPDATE THE STATEWIDE VOTER REGISTRATION DATABASE TO RESTORE PERMANENT MAIL-IN VOTER STATUS TO THOSE ELECTORS WHO HAD PREVIOUSLY SELECTED SUCH STATUS BUT HAD SUBSEQUENTLY BEEN MARKED AS, AND WERE MARKED AS OF THE EFFECTIVE DATE OF THIS SUBSECTION (3), "INACTIVE - FAILED TO VOTE".

(c) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (3) ARE NECESSARY TO CLARIFY EXISTING LAW AND TO ENSURE A UNIFORM APPLICATION OF THE RECENT JUDICIAL DETERMINATION THAT AN ELECTOR'S STATUS OF "INACTIVE - FAILED TO VOTE" DOES NOT OPERATE TO INVALIDATE, TERMINATE, OR SUSPEND THAT ELECTOR'S REGISTRATION.

(4) IN CONNECTION WITH ANY ELECTION CONDUCTED ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (4), IF A MAIL-IN BALLOT SENT TO A REGISTERED ELECTOR IS RETURNED BY THE UNITED STATES POSTAL SERVICE AS UNDELIVERABLE, THE COUNTY CLERK AND RECORDER SHALL

MARK THE REGISTRATION RECORD OF THAT ELECTOR WITH THE WORDS "INACTIVE - RETURNED MAIL". THE CLERK AND RECORDER SHALL MAIL A VOTER CONFIRMATION CARD PURSUANT TO SECTION 1-2-605 (6) (b) TO ANY ELECTOR WHOSE BALLOT WAS RETURNED BY THE UNITED STATES POSTAL SERVICE AS UNDELIVERABLE."

Page 3, strike line 8 and substitute:

"**SECTION 4. Applicability.** (1) The provisions of section 1 of this act apply to".

Page 3, after line 11 insert:

"(2) The provisions of section 2 of this act apply to requests for inspection of ballots submitted on or after the effective date of this act.

(3) The provisions of section 2 of this act take effect only if House Bill 12-1267 does not become law."

Renumber succeeding section accordingly.

Respectfully submitted,

House Committee:

Senate Committee: