

Second Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0544.02 Bob Lackner x4350

SENATE BILL 12-155

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SENATE SPONSORSHIP

Heath and White,

HOUSE SPONSORSHIP

Court and Murray,

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Senate Committees  
State, Veterans & Military Affairs

House Committees

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A BILL FOR AN ACT

101 CONCERNING PROCEDURES TO PROTECT TRANSPARENCY IN ELECTIONS  
102 WHILE PRESERVING THE INTEGRITY OF BALLOTS IN  
103 CONNECTION WITH A REQUEST FOR PUBLIC INSPECTION OF  
104 BALLOTS UNDER THE "COLORADO OPEN RECORDS ACT".

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

The bill prohibits the designated election official (official) from fulfilling a request under the "Colorado Open Records Act" (CORA) for

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.*

the public inspection of either ballots or ballot images arising out of any election in the state during the period commencing with the 45th day preceding election day and concluding with the date by which the official is required to certify an official abstract of votes cast for the applicable candidate contest or ballot issue or ballot question.

The stay required by the bill does not apply to a recount undertaken as provided by law. As with other public records open for inspection by the public under CORA, an interested party may inspect ballots in connection with the recount without having to obtain a court order granting such inspection.

In connection with the public inspection of ballots that an interested party is authorized to undertake in connection with a recount, the bill permits an interested party to 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 but prohibits the interested party from handling the original ballots.

Prior to and later than the stay period required by the bill, election records and ballots are required to be made available for inspection by the public in accordance with the following requirements:

- ! The original election records or ballots are required to remain in the custody of the official or his or her designee. In the discretion of the official or his or her designee, and subject to the requirements of the bill and existing CORA requirements, the official or his or her designee is obligated to determine the manner in which such records or ballots may be viewed by the public.
- ! The designated election official or his or her designee is required to 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;
- ! 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. The bill prohibits any ballot, or any portions or pages of a ballot, from being made available for inspection where the ballot, or any portion thereof, is identical in such form, considering a combination of the

election contests at issue and precinct coding, to only 9 or fewer ballots, or portions thereof, among all ballots used in the same election. However, any such ballot, or any portion thereof, that is equal in such form to 10 or more ballots, or any portions thereof, used in the same election may be inspected.

- ! To protect the privacy of particular electors, ballots made available for inspection may be presented in any random order selected by the official or his or her designee;
- ! 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
- ! Any actual costs incurred by the office of the official in making the election records and ballots available for inspection may be charged to the person requesting the inspection of the records or ballots. If the official selects a person other than an employee of his or her office to conduct the duties required by the bill, the actual costs to be charged the person seeking inspection are limited to the actual costs that would have been incurred if the work involved in complying with the requirements of the bill was completed by an employee of the official.

The bill specifies that its provisions shall not affect either the ability of a person to serve as a watcher or the operation of a canvass board.

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

2           **SECTION 1.** In Colorado Revised Statutes, **add** 24-72-205.5 as  
3 follows:

4           **24-72-205.5. Public inspection of ballots - stay period -**  
5 **exception to stay for recounts - rules governing public inspection of**  
6 **ballots - legislative declaration - definitions.** (1) (a) BY ENACTING THIS  
7 SECTION, THE GENERAL ASSEMBLY INTENDS TO PERMIT THE INSPECTION OF  
8 BALLOTS UNDER THE CONDITIONS SPECIFIED IN THIS SECTION AND TO  
9 PROTECT THE INTEGRITY OF THE ELECTION PROCESS WHILE PROTECTING  
10 VOTER PRIVACY AND PRESERVING SECRECY IN VOTING IN ACCORDANCE

1 WITH THE PROVISIONS OF SECTION 8 OF ARTICLE VII OF THE STATE  
2 CONSTITUTION.

3 (b) IN ORDER TO FACILITATE AND ENSURE A CONSISTENT  
4 APPLICATION OF THE PROVISIONS OF THIS SECTION ACROSS THE STATE, THE  
5 MATTERS ADDRESSED IN THIS SECTION ARE MATTERS OF STATEWIDE  
6 CONCERN.

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

9 (a) "BALLOT" MEANS A BALLOT VOTED BY ANY ACCEPTABLE,  
10 APPLICABLE, OR LEGAL METHOD THAT IS IN THE CUSTODY OF AN ELECTION  
11 OFFICIAL.

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

14 (c) "ELECTION RECORDS" HAS THE SAME MEANING AS SET FORTH  
15 IN SECTION 1-1-104 (11), C.R.S.

16 (d) "INTERESTED PARTY" MEANS:

17 (I) ANY CANDIDATE WHO WAS ON THE BALLOT IN AN ELECTION  
18 CONTEST THAT IS THE SUBJECT OF A RECOUNT OR THE POLITICAL PARTY OR  
19 POLITICAL ORGANIZATION OF SUCH CANDIDATE;

20 (II) ANY PETITION REPRESENTATIVE IDENTIFIED PURSUANT TO  
21 SECTION 1-40-113, C.R.S., IN CONNECTION WITH A BALLOT ISSUE OR  
22 BALLOT QUESTION THAT IS THE SUBJECT OF THE RECOUNT;

23 (III) THE GOVERNING BODY THAT REFERRED A BALLOT QUESTION  
24 OR BALLOT ISSUE TO THE ELECTORATE IF SUCH BALLOT QUESTION OR  
25 BALLOT ISSUE DID NOT PASS AT THE ELECTION; OR

26 (IV) THE AGENT OF AN ISSUE COMMITTEE THAT IS REQUIRED TO  
27 REPORT CONTRIBUTIONS PURSUANT TO THE "FAIR CAMPAIGN PRACTICES

1 ACT", ARTICLE 45 OF TITLE 1, C.R.S., THAT EITHER SUPPORTED A BALLOT  
2 QUESTION OR BALLOT ISSUE THAT DID NOT PASS AT THE ELECTION THAT IS  
3 THE SUBJECT OF THE RECOUNT OR OPPOSED A BALLOT QUESTION OR  
4 BALLOT ISSUE THAT PASSED AT THE ELECTION THAT IS THE SUBJECT OF THE  
5 RECOUNT.

6 (3) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF  
7 THIS SUBSECTION (3), THE DESIGNATED ELECTION OFFICIAL SHALL NOT  
8 FULFILL A REQUEST UNDER THIS PART 2 FOR THE PUBLIC INSPECTION OF  
9 EITHER BALLOTS OR BALLOT IMAGES ARISING OUT OF ANY ELECTION IN  
10 THE STATE DURING THE PERIOD COMMENCING WITH THE FORTY-FIFTH DAY  
11 PRECEDING ELECTION DAY AND CONCLUDING WITH THE DATE BY WHICH  
12 THE DESIGNATED ELECTION OFFICIAL IS REQUIRED TO CERTIFY AN OFFICIAL  
13 ABSTRACT OF VOTES CAST FOR THE APPLICABLE CANDIDATE CONTEST OR  
14 BALLOT ISSUE OR BALLOT QUESTION PURSUANT TO SECTION 1-10-105 (1)  
15 OR 31-10-1205 (1), C.R.S., AS APPLICABLE.

16 (b) THE DENIAL OF PUBLIC INSPECTION OF BALLOTS AUTHORIZED  
17 PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3) SHALL NOT APPLY  
18 TO A RECOUNT IN ACCORDANCE WITH THE PROVISIONS OF SECTION  
19 1-10-103 (2), 1-10-203 (1), 1-10.5-103, OR 31-10-1207, C.R.S., AS  
20 APPLICABLE. AS WITH OTHER PUBLIC RECORDS OPEN FOR INSPECTION BY  
21 THE PUBLIC UNDER THIS PART 2, AN INTERESTED PARTY MAY INSPECT  
22 BALLOTS IN CONNECTION WITH SUCH RECOUNT AS PERMITTED UNDER THIS  
23 SECTION WITHOUT HAVING TO OBTAIN A COURT ORDER GRANTING SUCH  
24 INSPECTION.

25 (c) IN CONNECTION WITH THE PUBLIC INSPECTION OF BALLOTS  
26 THAT AN INTERESTED PARTY IS AUTHORIZED TO UNDERTAKE UNDER  
27 PARAGRAPH (b) OF THIS SUBSECTION (3), AN INTERESTED PARTY MAY

1 WITNESS THE HANDLING OF BALLOTS INVOLVED IN THE RECOUNT TO  
2 VERIFY THAT THE RECOUNT IS BEING CONDUCTED IN A FAIR, IMPARTIAL,  
3 AND UNIFORM MANNER SO AS TO DETERMINE THAT ALL BALLOTS THAT  
4 HAVE BEEN CAST ARE ACCURATELY INTERPRETED AND COUNTED; EXCEPT  
5 THAT AN INTERESTED PARTY IS NOT PERMITTED TO HANDLE THE ORIGINAL  
6 BALLOTS.

7 (4) (a) IN ACCORDANCE WITH THE PROVISIONS OF SECTION  
8 24-72-203 (1) (a) AND IN ADDITION TO ANY OTHER REQUIREMENTS THAT  
9 ARE APPLICABLE TO A PERSON REQUESTING THE INSPECTION OF PUBLIC  
10 RECORDS UNDER THIS PART 2, PRIOR TO AND LATER THAN THE STAY  
11 PERIOD DESCRIBED IN PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION,  
12 ELECTION RECORDS AND BALLOTS SHALL BE AVAILABLE FOR INSPECTION  
13 BY THE PUBLIC IN ACCORDANCE WITH THE REQUIREMENTS OF THIS PART 2.

14 (b) IN CONNECTION WITH THE PUBLIC INSPECTION OF THE ELECTION  
15 RECORDS AND BALLOTS TO WHICH THIS SECTION PERTAINS:

16 (I) THE ORIGINAL ELECTION RECORDS OR BALLOTS SHALL AT ALL  
17 TIMES REMAIN IN THE CUSTODY OF THE DESIGNATED ELECTION OFFICIAL  
18 OR HIS OR HER DESIGNEE. IN THE DISCRETION OF THE DESIGNATED  
19 ELECTION OFFICIAL OR HIS OR HER DESIGNEE, AND SUBJECT TO THE  
20 PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (4) AND THIS PART 2,  
21 THE DESIGNATED ELECTION OFFICIAL OR HIS OR HER DESIGNEE SHALL  
22 DETERMINE THE MANNER IN WHICH SUCH RECORDS OR BALLOTS MAY BE  
23 VIEWED BY THE PUBLIC.

24 (II) THE DESIGNATED ELECTION OFFICIAL OR HIS OR HER DESIGNEE  
25 SHALL COVER OR REDACT, BASED UPON THE MOST PRACTICAL MEANS  
26 AVAILABLE, ANY MARKINGS OR MESSAGE ON A BALLOT THAT MAY  
27 IDENTIFY THE PARTICULAR ELECTOR WHO CAST THE BALLOT BEFORE THE

1 BALLOT MAY BE MADE AVAILABLE FOR PUBLIC INSPECTION;

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

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

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

1           (VI) ANY ACTUAL COSTS INCURRED BY THE OFFICE OF THE  
2 DESIGNATED ELECTION OFFICIAL IN MAKING THE ELECTION RECORDS AND  
3 BALLOTS AVAILABLE FOR INSPECTION IN ACCORDANCE WITH THE  
4 REQUIREMENTS OF THIS SECTION MAY BE CHARGED TO THE PERSON  
5 REQUESTING INSPECTION OF THE RECORDS OR BALLOTS. IF THE  
6 DESIGNATED ELECTION OFFICIAL SELECTS A PERSON OTHER THAN AN  
7 EMPLOYEE OF HIS OR HER OFFICE TO CONDUCT THE DUTIES REQUIRED BY  
8 THIS SECTION, THE ACTUAL COSTS TO BE CHARGED THE PERSON SEEKING  
9 INSPECTION SHALL NOT EXCEED THE ACTUAL COSTS THAT WOULD HAVE  
10 BEEN INCURRED IF THE WORK INVOLVED IN COMPLYING WITH THE  
11 REQUIREMENTS OF THIS SECTION WAS COMPLETED BY AN EMPLOYEE OF  
12 THE DESIGNATED ELECTION OFFICIAL.

13           (5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,  
14 NOTHING IN THIS SECTION SHALL AFFECT EITHER THE ABILITY OF A PERSON  
15 TO SERVE AS A WATCHER OR THE OPERATION OF A CANVASS BOARD IN  
16 ACCORDANCE WITH THE PROVISIONS OF ARTICLES 1 TO 13 OF TITLE 1,  
17 C.R.S.

18           **SECTION 2. Applicability.** The provisions of this act apply to  
19 requests for inspection of election records and ballots submitted on or  
20 after the effective date of this act.

21           **SECTION 3. Safety clause.** The general assembly hereby finds,  
22 determines, and declares that this act is necessary for the immediate  
23 preservation of the public peace, health, and safety.