

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 12-0544.02 Bob Lackner x4350

SENATE BILL 12-155

SENATE SPONSORSHIP

Heath and White,

HOUSE SPONSORSHIP

Court and Murray,

Senate Committees
State, Veterans & Military Affairs

House Committees

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".**

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.

SENATE
3rd Reading Unamended
May 7, 2012

SENATE
Amended 2nd Reading
May 4, 2012

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.

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. "BALLOT" INCLUDES ANY DIGITAL IMAGE OR ELECTRONIC
12 REPRESENTATION OF VOTES CAST.

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

15 (c) "INTERESTED PARTY" MEANS:

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

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

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

27 (IV) THE AGENT OF AN ISSUE COMMITTEE THAT IS REQUIRED TO

1 REPORT CONTRIBUTIONS PURSUANT TO THE "FAIR CAMPAIGN PRACTICES
2 ACT", ARTICLE 45 OF TITLE 1, C.R.S., THAT EITHER SUPPORTED OR
3 OPPOSED A BALLOT QUESTION OR BALLOT ISSUE THAT IS THE SUBJECT OF
4 THE RECOUNT.

5 (3) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF
6 THIS SUBSECTION (3), THE DESIGNATED ELECTION OFFICIAL SHALL NOT
7 FULFILL A REQUEST UNDER THIS PART 2 FOR THE PUBLIC INSPECTION OF
8 BALLOTS DURING THE PERIOD COMMENCING WITH THE FORTY-FIFTH DAY
9 PRECEDING ELECTION DAY AND CONCLUDING WITH THE DATE EITHER BY
10 WHICH THE DESIGNATED ELECTION OFFICIAL IS REQUIRED TO CERTIFY AN
11 OFFICIAL ABSTRACT OF VOTES CAST FOR THE APPLICABLE CANDIDATE
12 CONTEST OR BALLOT ISSUE OR BALLOT QUESTION PURSUANT TO SECTION
13 1-10-102 OR 31-10-1205 (1), C.R.S., AS APPLICABLE, OR BY WHICH ANY
14 RECOUNT CONDUCTED IN ACCORDANCE WITH ARTICLE 10.5 OF TITLE 1,
15 C.R.S., OR SECTION 31-10-1207, C.R.S., IS COMPLETED, AS APPLICABLE,
16 WHICHEVER DATE IS LATER. THE DENIAL OF PUBLIC INSPECTION OF
17 BALLOTS AUTHORIZED PURSUANT TO THIS PARAGRAPH (a) SHALL ALSO
18 APPLY TO ANY INTERNAL BATCH REPORTS GENERATED BY A DESIGNATED
19 ELECTION OFFICIAL FOR THE SPECIFIC PURPOSE OF AUDITING BALLOTS
20 RECEIVED IN THE COURSE OF CONDUCTING AN ELECTION.

21 (b) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
22 THE DENIAL OF PUBLIC INSPECTION OF BALLOTS AUTHORIZED PURSUANT
23 TO PARAGRAPH (a) OF THIS SUBSECTION (3) SHALL APPLY TO A RECOUNT
24 THAT IS CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE
25 10.5 OF TITLE 1, C.R.S., OR SECTION 31-10-1207, C.R.S., AS APPLICABLE;
26 EXCEPT THAT, DURING THE PERIOD DESCRIBED IN PARAGRAPH (a) OF THIS
27 SUBSECTION (3), AN INTERESTED PARTY MAY INSPECT AND REQUEST

1 COPIES OF BALLOTS IN CONNECTION WITH SUCH RECOUNT WITHOUT
2 HAVING TO OBTAIN A COURT ORDER GRANTING SUCH INSPECTION. IN
3 CONNECTION WITH AN INSPECTION BY AN INTERESTED PARTY AS
4 AUTHORIZED BY THIS PARAGRAPH (b), AN INTERESTED PARTY MAY
5 WITNESS THE HANDLING OF BALLOTS INVOLVED IN THE RECOUNT TO
6 VERIFY THAT THE RECOUNT IS BEING CONDUCTED IN A FAIR, IMPARTIAL,
7 AND UNIFORM MANNER SO AS TO DETERMINE THAT ALL BALLOTS THAT
8 HAVE BEEN CAST ARE ACCURATELY INTERPRETED AND COUNTED; EXCEPT
9 THAT AN INTERESTED PARTY IS NOT PERMITTED TO HANDLE THE ORIGINAL
10 BALLOTS. EXCEPT AS SPECIFIED IN THIS PARAGRAPH (b), NOTHING IN THIS
11 SECTION SHALL BE CONSTRUED TO PROHIBIT AN INTERESTED PARTY FROM
12 REQUESTING COPIES OF BALLOTS IN CONNECTION WITH A RECOUNT, TO
13 AFFECT THE CONDUCT OF A RECOUNT, OR TO AFFECT THE RIGHTS OF AN
14 INTERESTED PARTY IN CONNECTION WITH A RECOUNT.

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

20 (4) (a) IN ACCORDANCE WITH THE PROVISIONS OF SECTION
21 24-72-203 (1) (a) AND IN ADDITION TO ANY OTHER REQUIREMENTS THAT
22 ARE APPLICABLE TO A PERSON REQUESTING THE INSPECTION OF PUBLIC
23 RECORDS UNDER THIS PART 2, PRIOR TO AND LATER THAN THE STAY
24 PERIOD DESCRIBED IN PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION,
25 BALLOTS SHALL BE AVAILABLE FOR INSPECTION BY THE PUBLIC IN
26 ACCORDANCE WITH THE REQUIREMENTS OF THIS PART 2.

27 (b) IN CONNECTION WITH THE PUBLIC INSPECTION OF THE BALLOTS

1 TO WHICH THIS SECTION PERTAINS:

2 (I) THE ORIGINAL BALLOTS SHALL AT ALL TIMES REMAIN IN THE
3 CUSTODY OF THE DESIGNATED ELECTION OFFICIAL OR HIS OR HER
4 DESIGNEE. IN THE DISCRETION OF THE DESIGNATED ELECTION OFFICIAL OR
5 HIS OR HER DESIGNEE, AND SUBJECT TO THE PROVISIONS OF PARAGRAPH
6 (a) OF THIS SUBSECTION (4) AND THIS PART 2, THE DESIGNATED ELECTION
7 OFFICIAL OR HIS OR HER DESIGNEE SHALL DETERMINE THE MANNER IN
8 WHICH SUCH BALLOTS MAY BE VIEWED BY THE PUBLIC.

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

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

1 BALLOTS USED IN THE SAME ELECTION. HOWEVER, ANY SUCH BALLOT, OR
2 ANY REQUESTED PORTION THEREOF, THAT IS IDENTICAL IN PRINTED FORM
3 TO TEN OR MORE BALLOTS, OR COMPARABLE PORTIONS THEREOF, USED IN
4 THE SAME ELECTION MAY BE INSPECTED.

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

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

14 (VI) ANY ACTUAL COSTS INCURRED BY THE OFFICE OF THE
15 DESIGNATED ELECTION OFFICIAL IN MAKING THE BALLOTS AVAILABLE FOR
16 INSPECTION IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION
17 MAY BE CHARGED TO THE PERSON REQUESTING INSPECTION OF THE
18 BALLOTS. IF THE DESIGNATED ELECTION OFFICIAL SELECTS A PERSON
19 OTHER THAN AN EMPLOYEE OF HIS OR HER OFFICE TO CONDUCT THE DUTIES
20 REQUIRED BY THIS SECTION, THE ACTUAL COSTS TO BE CHARGED THE
21 PERSON SEEKING INSPECTION SHALL NOT EXCEED THE ACTUAL COSTS THAT
22 WOULD HAVE BEEN INCURRED IF THE WORK INVOLVED IN COMPLYING WITH
23 THE REQUIREMENTS OF THIS SECTION WAS COMPLETED BY AN EMPLOYEE
24 OF THE DESIGNATED ELECTION OFFICIAL.

25 (5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
26 NOTHING IN THIS SECTION AFFECTS EITHER THE RIGHTS OF A WATCHER SET
27 FORTH IN THE PROVISIONS OF TITLES 1 AND 31, C.R.S., OR THE OPERATION

1 OF A CANVASS BOARD IN ACCORDANCE WITH THE PROVISIONS OF ARTICLES
2 1 TO 13 OF TITLE 1, C.R.S.

3 **SECTION 2. Applicability.** The provisions of this act apply to
4 requests for inspection of ballots submitted on or after the effective date
5 of this act.

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