

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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.

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.

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 EITHER BY
12 WHICH THE DESIGNATED ELECTION OFFICIAL IS REQUIRED TO CERTIFY AN
13 OFFICIAL ABSTRACT OF VOTES CAST FOR THE APPLICABLE CANDIDATE
14 CONTEST OR BALLOT ISSUE OR BALLOT QUESTION PURSUANT TO SECTION
15 1-11-103, 1-11-104, 1-11-105, OR 31-10-1205 (1), C.R.S., AS APPLICABLE,
16 OR BY WHICH ANY RECOUNT CONDUCTED IN ACCORDANCE WITH ARTICLE
17 10.5 OF TITLE 1, C.R.S., OR SECTION 31-10-1207, C.R.S., IS COMPLETED,
18 AS APPLICABLE, WHICHEVER DATE IS LATER.

19 (b) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
20 THE DENIAL OF PUBLIC INSPECTION OF BALLOTS AUTHORIZED PURSUANT
21 TO PARAGRAPH (a) OF THIS SUBSECTION (3) SHALL APPLY TO A RECOUNT
22 THAT IS CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE
23 10.5 OF TITLE 1, C.R.S., OR SECTION 31-10-1207, C.R.S., AS APPLICABLE;
24 EXCEPT THAT, DURING THE PERIOD DESCRIBED IN PARAGRAPH (a) OF THIS
25 SUBSECTION (3), AN INTERESTED PARTY MAY INSPECT AND REQUEST
26 COPIES OF BALLOTS IN CONNECTION WITH SUCH RECOUNT WITHOUT
27 HAVING TO OBTAIN A COURT ORDER GRANTING SUCH INSPECTION. IN

1 CONNECTION WITH AN INSPECTION BY AN INTERESTED PARTY AS
2 AUTHORIZED BY THIS PARAGRAPH (b), AN INTERESTED PARTY MAY
3 WITNESS THE HANDLING OF BALLOTS INVOLVED IN THE RECOUNT TO
4 VERIFY THAT THE RECOUNT IS BEING CONDUCTED IN A FAIR, IMPARTIAL,
5 AND UNIFORM MANNER SO AS TO DETERMINE THAT ALL BALLOTS THAT
6 HAVE BEEN CAST ARE ACCURATELY INTERPRETED AND COUNTED; EXCEPT
7 THAT AN INTERESTED PARTY IS NOT PERMITTED TO HANDLE THE ORIGINAL
8 BALLOTS. EXCEPT AS SPECIFIED IN THIS PARAGRAPH (b), NOTHING IN THIS
9 SECTION IS INTENDED NOR OTHERWISE SHALL BE CONSTRUED TO AFFECT
10 THE CONDUCT OF A RECOUNT AS PROVIDED BY LAW OR THE RIGHTS OF AN
11 INTERESTED PARTY IN CONNECTION WITH SUCH RECOUNT.

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

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

21 (I) THE ORIGINAL ELECTION RECORDS OR BALLOTS SHALL AT ALL
22 TIMES REMAIN IN THE CUSTODY OF THE DESIGNATED ELECTION OFFICIAL
23 OR HIS OR HER DESIGNEE. IN THE DISCRETION OF THE DESIGNATED
24 ELECTION OFFICIAL OR HIS OR HER DESIGNEE, AND SUBJECT TO THE
25 PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (4) AND THIS PART 2,
26 THE DESIGNATED ELECTION OFFICIAL OR HIS OR HER DESIGNEE SHALL
27 DETERMINE THE MANNER IN WHICH SUCH RECORDS OR BALLOTS MAY BE

1 VIEWED BY THE PUBLIC.

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

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

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

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

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

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

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

26 **SECTION 3. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.