A BILL FOR AN ACT

CONCERNING BROADENING PROTECTIONS OF THE STATE WHISTLEBLOWER PROTECTION LAW FOR STATE EMPLOYEES WHO DISCLOSE CONFIDENTIAL INFORMATION TO CERTAIN STATE ENTITIES THAT HAVE LEGAL REQUIREMENTS TO PRESERVE THE CONFIDENTIALITY OF THE INFORMATION DISCLOSED.

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 broadens the protections of the state whistleblower protection law by specifying that no appointing authority or supervisor
may take disciplinary action against a state employee for disclosing information that is not subject to public inspection under the "Colorado Open Records Act", or that is confidential under any other provision of law, to any of the following state entities that are designated as whistleblower review agencies:

- The office of legislative legal services;
- The state attorney general; or
- The commission on judicial discipline.

The bill requires whistleblower review agencies to:

- Confer with each other within 30 days of receiving information and agree on whether information disclosed to a whistleblower review agency is confidential under law and, if so, to maintain the confidentiality of information if required by law;
- Release information to members of the general assembly and to the public if information is determined to be releasable;
- Maintain records of information disclosed to whistleblower review agencies and the decisions of the whistleblower review agencies with respect to the information; and
- Designate a person or persons as a point of contact for whistleblower review agency activities and publicize the information.

Within 60 days after receiving any information, a whistleblower review agency may confer with and transfer the information to the entity having jurisdiction or authority to investigate any allegation of unlawful behavior.

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

SECTION 1. In Colorado Revised Statutes, amend 24-50.5-101 as follows:

24-50.5-101. Legislative declaration. (1) The general assembly hereby declares that the people of Colorado are entitled to information about the workings of state government in order to reduce the waste and mismanagement of public funds, to reduce abuses in government authority, and to prevent illegal and unethical practices. The general assembly further declares that employees of the state of Colorado are citizens first and have a right and a responsibility to behave as good
citizens in our common efforts to provide sound management of governmental affairs. To help achieve these objectives, the general assembly declares that state employees should be encouraged to disclose information on actions of state agencies that are not in the public interest and that legislation is needed to ensure that any employee making such disclosures shall not be subject to disciplinary measures or harassment by any public official.

(2) **THE GENERAL ASSEMBLY FURTHER DECLARES THAT THE PURPOSE OF THE CREATION OF WHISTLEBLOWER REVIEW AGENCIES IN THIS ARTICLE IS TO PROVIDE A MECHANISM FOR DETERMINING WHETHER INFORMATION ABOUT STATE OPERATIONS OR CONDUCT PROVIDED BY A STATE EMPLOYEE MAY BE MADE PUBLIC BY A STATE EMPLOYEE WHISTLEBLOWER, EITHER TO MEMBERS OF THE GENERAL ASSEMBLY OR ULTIMATELY TO THE PUBLIC, WHILE PROTECTING THAT STATE EMPLOYEE FROM PUNITIVE ACTION AND WHILE MAINTAINING THE CONFIDENTIAL NATURE OF INFORMATION WHERE REQUIRED BY LAW.**

**SECTION 2.** In Colorado Revised Statutes, 24-50.5-102, **add** (6) as follows:

**24-50.5-102. Definitions.** As used in this article, unless the context otherwise requires:

(6) "WHISTLEBLOWER REVIEW AGENCY" MEANS THE OFFICE OF LEGISLATIVE LEGAL SERVICES UNDER PART 5 OF ARTICLE 3 OF TITLE 2, C.R.S., THE STATE ATTORNEY GENERAL UNDER ARTICLE 31 OF THIS TITLE, OR THE COMMISSION ON JUDICIAL DISCIPLINE UNDER SECTION 23 OF ARTICLE VI OF THE STATE CONSTITUTION.

**SECTION 3.** In Colorado Revised Statutes, **amend 24-50.5-103** as follows:
24-50.5-103. Retaliation prohibited. (1) Except as provided in subsection (2) of this section, no appointing authority or supervisor shall not initiate or administer any disciplinary action against an employee on account of the employee's disclosure of information. This section shall not apply to an employee who discloses:

(a) An employee who discloses information that he or she knows to be false or who discloses information with disregard for the truth or falsity thereof of the information;

(b) An employee who discloses information from public records which are closed to public inspection pursuant to section 24-72-204; or

(c) An employee who discloses information which is confidential under any other provision of law.

(2) It shall be the obligation of an employee who wishes to disclose information under the protection of this article to make a good-faith effort to provide to his or her supervisor or appointing authority or member of the general assembly the information to be disclosed prior to the time of its disclosure.

(3) Paragraphs (b) and (c) of subsection (1) of this section do not apply to an employee who discloses information to a whistleblower review agency.

(4) (a) Upon receipt of any information disclosed under subsection (3) of this section that may be confidential under law, a whistleblower review agency, within thirty days after receiving the information, shall consult with each of the other whistleblower review agencies and make a joint determination,
DOCUMENTED IN WRITING, AS TO WHETHER THE INFORMATION IS
CONFIDENTIAL UNDER LAW. EACH WHISTLEBLOWER REVIEW AGENCY
SHALL MAINTAIN THE CONFIDENTIAL NATURE OF ANY INFORMATION
DETERMINED TO BE CONFIDENTIAL UNDER LAW.

(b) WITHIN SIXTY DAYS AFTER RECEIVING ANY INFORMATION
UNDER SUBSECTION (3) OF THIS SECTION, A WHISTLEBLOWER REVIEW
AGENCY MAY CONFER WITH AND TRANSFER THE INFORMATION TO THE
ENTITY HAVING JURISDICTION OR AUTHORITY TO INVESTIGATE ANY
ALLEGATION OF UNLAWFUL BEHAVIOR.

(c) IF A WHISTLEBLOWER REVIEW AGENCY DETERMINES THAT THE
INFORMATION OR A PORTION OF THE INFORMATION RECEIVED IS NOT
PROHIBITED FROM DISCLOSURE UNDER SECTION 24-72-204 OR IS NOT
OTHERWISE CONFIDENTIAL UNDER ANY OTHER PROVISION OF LAW, THAT
INFORMATION MAY BE RELEASED TO THE GENERAL ASSEMBLY OR THE
PUBLIC UPON REQUEST. EACH WHISTLEBLOWER REVIEW AGENCY SHALL
MAINTAIN RECORDS OF INFORMATION DISCLOSED TO THE WHISTLEBLOWER
REVIEW AGENCY UNDER SUBSECTION (3) OF THIS SECTION, AND THE
ACTION OF THE WHISTLEBLOWER REVIEW AGENCY WITH RESPECT TO EACH
DISCLOSURE UNDER SUBSECTION (3) OF THIS SECTION.

(5) EACH WHISTLEBLOWER REVIEW AGENCY SHALL DESIGNATE A
PERSON OR PERSONS AS A POINT OF CONTACT FOR FUNCTIONS UNDER THIS
SECTION AND SHALL MAKE THE CONTACT INFORMATION FOR THAT PERSON
OR THOSE PERSONS PUBLIC ON THE WEBSITE OF THE WHISTLEBLOWER
REVIEW AGENCY AND BY ANY OTHER APPROPRIATE MEANS.

SECTION 4. Effective date - applicability. This act takes effect
upon passage and applies to any information disclosed by a state
employee to a whistleblower review agency on or after said date.
SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.