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HOUSE BILL 21-1051

BY REPRESENTATIVE(S) Geitner and Bird, Duran, Kipp;
also SENATOR(S) Pettersen and Liston.

CONCERNING PUBLICLY AVAILABLE INFORMATION ABOUT APPLICANTS FOR
PUBLIC EMPLOYMENT.

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The ability of state and local public bodies to attract highly qualified applicants for employment positions, including chief executive officer positions, is essential to their ability to function effectively;

(b) The "Colorado Sunshine Act of 1972", commonly called the Colorado open meetings law, requires a state or local public body hiring a chief executive officer to make public a list of all finalists under consideration before making an offer of appointment or employment;

(c) Multiple state district courts have interpreted these provisions to require a state or local public body to name more than one applicant as a

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

finalist for that position;

(d) Because the "Colorado Open Records Act" makes the application materials of finalists subject to public inspection, these court rulings have required the public disclosure of the application materials of multiple unsuccessful candidates for chief executive officer positions in state and local government;

(e) The likelihood of having application materials publicly released even when a candidate is not selected has in turn had a chilling effect on the ability of state and local public bodies to attract candidates for these positions, due to concerns about individual privacy among potential candidates; and

(f) It is therefore in the interest of the state and of local governments to establish that:

(I) A state or local public body may in its discretion name a single finalist for a chief executive officer position; and

(II) The application materials of candidates who are not named as finalists for a chief executive officer position and the application materials of unsuccessful candidates for other public employment are not subject to public inspection.

SECTION 2. In Colorado Revised Statutes, 24-6-402, **amend** (3.5) as follows:

24-6-402. Meetings - open to public - legislative declaration - definitions. (3.5) A search committee of a state public body or local public body shall establish job search goals, including the writing of the job description, deadlines for applications, requirements for applicants, selection procedures, and the time frame for appointing or employing a chief executive officer of an agency, authority, institution, or other entity at an open meeting. The state or local public body shall NAME ONE OR MORE CANDIDATES AS FINALISTS FOR THE POSITION OF CHIEF EXECUTIVE OFFICER. THE STATE OR LOCAL PUBLIC BODY SHALL make public the ~~list of all~~ FINALIST OR finalists under consideration for the position of chief executive officer no later than fourteen days prior to appointing or employing ~~one of the finalists~~ A FINALIST to fill the position. No offer of appointment or

employment shall be made prior to this public notice. Records submitted by or on behalf of a finalist for such position shall be subject to ~~the provisions of section 24-72-204 (3)(a)(XI). As used in this subsection (3.5), "finalist" shall have the same meaning as in section 24-72-204 (3)(a)(XI).~~ Nothing in this subsection (3.5) shall be construed to prohibit a search committee from holding an executive session to consider appointment or employment matters not described in this subsection (3.5) and otherwise authorized by this section.

SECTION 3. In Colorado Revised Statutes, 24-72-204, **amend (3)(a)(XI)** as follows:

24-72-204. Allowance or denial of inspection - grounds - procedure - appeal - definitions - repeal. (3) (a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest pursuant to this subsection (3):

(XI) (A) ~~EXCEPT AS PROVIDED IN SUBSECTION (3)(a)(XI)(D) OF THIS SECTION, records submitted by or on behalf of an applicant or candidate for ANY EMPLOYMENT POSITION, INCLUDING AN APPLICANT FOR an executive position as defined in section 24-72-202 (1.3) who is not a finalist. For purposes of this subparagraph (XI) SUBSECTION (3)(a)(XI), "finalist" means an applicant or candidate for an executive position as the chief executive officer of a state agency, institution, or political subdivision or agency thereof who is a member of the final group of applicants or candidates made public NAMED AS A FINALIST pursuant to section 24-6-402 (3.5). and if only three or fewer applicants or candidates for the chief executive officer position possess the minimum qualifications for the position, said applicants or candidates shall be considered finalists.~~

(B) ~~The provisions of this subparagraph (XI)~~ THIS SUBSECTION (3)(a)(XI) shall not be construed to prohibit the public inspection or copying of any records submitted by or on behalf of a finalist OR THE APPLICATIONS OF PAST OR CURRENT EMPLOYEES; except that letters of reference or medical, psychological, and sociological data concerning finalists OR PAST OR CURRENT EMPLOYEES shall not be made available for public inspection or copying.

(C) ~~The provisions of this subparagraph (XI) shall apply~~ THIS SUBSECTION (3)(a)(XI) APPLIES to employment selection processes for all EMPLOYMENT AND executive positions, including, but not limited to, selection processes conducted or assisted by private persons or firms at the request of a state agency, institution, or political subdivision.

(D) NOTWITHSTANDING SUBSECTION (3)(a)(XI)(A) OF THIS SECTION, A CUSTODIAN SHALL ALLOW PUBLIC INSPECTION OF THE DEMOGRAPHIC DATA OF A CANDIDATE WHO WAS INTERVIEWED BY THE STATE PUBLIC BODY, LOCAL PUBLIC BODY, OR SEARCH COMMITTEE FOR AN EXECUTIVE POSITION AS DEFINED IN SECTION 24-72-202 (1.3), BUT IS NOT NAMED AS A FINALIST PURSUANT TO SUBSECTION 24-6-402 (3.5). FOR PURPOSES OF THIS SUBSECTION (3)(a)(XI)(D), "DEMOGRAPHIC DATA" MEANS INFORMATION ON A CANDIDATE'S RACE AND GENDER THAT HAS BEEN LEGALLY REQUESTED AND VOLUNTARILY PROVIDED ON THE CANDIDATE'S APPLICATION AND DOES NOT INCLUDE THE CANDIDATE'S NAME OR OTHER INFORMATION.

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in

November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Leroy M. Garcia
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO