

CHAPTER 286

GOVERNMENT - STATE

HOUSE BILL 01-1359

BY REPRESENTATIVE(S) Mitchell, Grossman, Lawrence, Plant, Romanoff, Cloer, and Weddig;
also SENATOR(S) Matsunaka, Andrews, Dyer (Arapahoe), Dyer (Durango), Evans, Fitz-Gerald, Gordon, Hagedorn, Hanna,
Hernandez, Hillman, McElhany, Musgrave, Nichol, Owen, Pascoe, Takis, Tate, Teck, Tupa, and Windels.

AN ACT

CONCERNING PUBLIC ACCESS TO INFORMATION, AND, IN CONNECTION THEREWITH, PROVIDING FOR
PUBLIC ACCESS TO INFORMATION DISCUSSED IN CERTAIN MEETINGS OF PUBLIC BODIES AND
PROVIDING REMEDIES AND PENALTIES FOR VIOLATIONS OF THE OPEN MEETINGS LAW AND THE OPEN
RECORDS ACT.

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

SECTION 1. 24-6-402 (2), Colorado Revised Statutes, is amended BY THE
ADDITION OF A NEW PARAGRAPH to read:

24-6-402. Meetings - open to public. (2) (d.5) (I) (A) DISCUSSIONS THAT
OCCUR IN AN EXECUTIVE SESSION OF A STATE PUBLIC BODY SHALL BE RECORDED IN
THE SAME MANNER AND MEDIA THAT THE STATE PUBLIC BODY USES TO RECORD THE
MINUTES OF OPEN MEETINGS. A STATE PUBLIC BODY MAY SATISFY THE RECORDING
REQUIREMENTS OF THIS SUB-SUBPARAGRAPH (A) BY MAKING ANY FORM OF
ELECTRONIC RECORDING OF THE DISCUSSIONS IN AN EXECUTIVE SESSION OF THE STATE
PUBLIC BODY. EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (B) OF THIS
SUBPARAGRAPH (I), THE RECORD OF AN EXECUTIVE SESSION SHALL REFLECT THE
SPECIFIC CITATION TO THE PROVISION IN SUBSECTION (3) OF THIS SECTION THAT
AUTHORIZES THE STATE PUBLIC BODY TO MEET IN AN EXECUTIVE SESSION, THE
ACTUAL CONTENTS OF THE DISCUSSION DURING THE SESSION, AND A SIGNED
STATEMENT FROM THE CHAIR OF THE EXECUTIVE SESSION ATTESTING THAT ANY
WRITTEN MINUTES SUBSTANTIALLY REFLECT THE SUBSTANCE OF THE DISCUSSIONS
DURING THE EXECUTIVE SESSION. FOR PURPOSES OF THIS SUB-SUBPARAGRAPH (A),
"ACTUAL CONTENTS OF THE DISCUSSION" SHALL NOT BE CONSTRUED TO REQUIRE THE
MINUTES OF AN EXECUTIVE SESSION TO CONTAIN A VERBATIM TRANSCRIPT OF THE
DISCUSSION DURING SAID EXECUTIVE SESSION. THE PROVISIONS OF THIS
SUB-SUBPARAGRAPH (A) SHALL NOT APPLY TO DISCUSSIONS OF INDIVIDUAL STUDENTS

*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions
from existing statutes and such material not part of act.*

BY A STATE PUBLIC BODY PURSUANT TO PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION.

(B) IF, IN THE OPINION OF THE ATTORNEY WHO IS REPRESENTING THE STATE PUBLIC BODY AND IS IN ATTENDANCE AT THE EXECUTIVE SESSION, ALL OR A PORTION OF THE DISCUSSION DURING THE EXECUTIVE SESSION CONSTITUTES A PRIVILEGED ATTORNEY-CLIENT COMMUNICATION, NO RECORD SHALL BE REQUIRED TO BE KEPT OF THE PART OF THE DISCUSSION THAT CONSTITUTES A PRIVILEGED ATTORNEY-CLIENT COMMUNICATION. ANY ELECTRONIC RECORD OF SAID EXECUTIVE SESSION DISCUSSION SHALL REFLECT THAT NO FURTHER RECORD WAS KEPT OF THE DISCUSSION BASED ON THE OPINION OF THE ATTORNEY REPRESENTING THE STATE PUBLIC BODY, AS STATED FOR THE RECORD DURING THE EXECUTIVE SESSION, THAT THE DISCUSSION CONSTITUTES A PRIVILEGED ATTORNEY-CLIENT COMMUNICATION. ANY WRITTEN MINUTES SHALL CONTAIN A SIGNED STATEMENT FROM THE ATTORNEY REPRESENTING THE STATE PUBLIC BODY ATTESTING THAT THE PORTION OF THE EXECUTIVE SESSION THAT WAS NOT RECORDED CONSTITUTED A PRIVILEGED ATTORNEY-CLIENT COMMUNICATION IN THE OPINION OF THE ATTORNEY AND A SIGNED STATEMENT FROM THE CHAIR OF THE EXECUTIVE SESSION ATTESTING THAT THE PORTION OF THE EXECUTIVE SESSION THAT WAS NOT RECORDED WAS CONFINED TO THE TOPIC AUTHORIZED FOR DISCUSSION IN AN EXECUTIVE SESSION PURSUANT TO SUBSECTION (3) OF THIS SECTION.

(C) IF A COURT FINDS, UPON APPLICATION OF A PERSON SEEKING ACCESS TO THE RECORD OF THE EXECUTIVE SESSION OF A STATE PUBLIC BODY IN ACCORDANCE WITH SECTION 24-72-204 (5.5) AND AFTER AN IN CAMERA REVIEW OF THE RECORD OF THE EXECUTIVE SESSION, THAT THE STATE PUBLIC BODY ENGAGED IN SUBSTANTIAL DISCUSSION OF ANY MATTERS NOT ENUMERATED IN SUBSECTION (3) OF THIS SECTION OR THAT THE BODY ADOPTED A PROPOSED POLICY, POSITION, RESOLUTION, RULE, REGULATION, OR FORMAL ACTION IN THE EXECUTIVE SESSION IN CONTRAVENTION OF PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION, THE PORTION OF THE RECORD OF THE EXECUTIVE SESSION THAT REFLECTS THE SUBSTANTIAL DISCUSSION OF MATTERS NOT ENUMERATED IN SUBSECTION (3) OF THIS SECTION OR THE ADOPTION OF A PROPOSED POLICY, POSITION, RESOLUTION, RULE, REGULATION, OR FORMAL ACTION SHALL BE OPEN TO PUBLIC INSPECTION PURSUANT TO SECTION 24-72-204 (5.5).

(D) NO PORTION OF THE RECORD OF AN EXECUTIVE SESSION OF A STATE PUBLIC BODY SHALL BE OPEN FOR PUBLIC INSPECTION OR SUBJECT TO DISCOVERY IN ANY ADMINISTRATIVE OR JUDICIAL PROCEEDING, EXCEPT UPON THE CONSENT OF THE STATE PUBLIC BODY OR AS PROVIDED IN SUB-SUBPARAGRAPH (C) OF THIS SUBPARAGRAPH (I) AND SECTION 24-72-204 (5.5).

(E) THE RECORD OF AN EXECUTIVE SESSION OF A STATE PUBLIC BODY RECORDED PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I) SHALL BE RETAINED FOR AT LEAST NINETY DAYS AFTER THE DATE OF THE EXECUTIVE SESSION.

(II) (A) DISCUSSIONS THAT OCCUR IN AN EXECUTIVE SESSION OF A LOCAL PUBLIC BODY SHALL BE RECORDED IN THE SAME MANNER AND MEDIA THAT THE LOCAL PUBLIC BODY USES TO RECORD THE MINUTES OF OPEN MEETINGS. A LOCAL PUBLIC BODY MAY SATISFY THE RECORDING REQUIREMENTS OF THIS SUB-SUBPARAGRAPH (A) BY MAKING ANY FORM OF ELECTRONIC RECORDING OF THE DISCUSSIONS IN AN EXECUTIVE SESSION OF THE LOCAL PUBLIC BODY. EXCEPT AS PROVIDED IN SUB-SUBPARAGRAPH (B) OF

THIS SUBPARAGRAPH (II), THE RECORD OF AN EXECUTIVE SESSION SHALL REFLECT THE SPECIFIC CITATION TO THE PROVISION IN SUBSECTION (4) OF THIS SECTION THAT AUTHORIZES THE LOCAL PUBLIC BODY TO MEET IN AN EXECUTIVE SESSION, THE ACTUAL CONTENTS OF THE DISCUSSION DURING THE SESSION, AND A SIGNED STATEMENT FROM THE CHAIR OF THE EXECUTIVE SESSION ATTESTING THAT ANY WRITTEN MINUTES SUBSTANTIALLY REFLECT THE SUBSTANCE OF THE DISCUSSIONS DURING THE EXECUTIVE SESSION. FOR PURPOSES OF THIS SUB-SUBPARAGRAPH (A), "ACTUAL CONTENTS OF THE DISCUSSION" SHALL NOT BE CONSTRUED TO REQUIRE THE MINUTES OF AN EXECUTIVE SESSION TO CONTAIN A VERBATIM TRANSCRIPT OF THE DISCUSSION DURING SAID EXECUTIVE SESSION. THE PROVISIONS OF THIS SUB-SUBPARAGRAPH (A) SHALL NOT APPLY TO DISCUSSIONS OF INDIVIDUAL STUDENTS BY A LOCAL PUBLIC BODY PURSUANT TO PARAGRAPH (h) OF SUBSECTION (4) OF THIS SECTION.

(B) IF, IN THE OPINION OF THE ATTORNEY WHO IS REPRESENTING THE LOCAL PUBLIC BODY AND WHO IS IN ATTENDANCE AT THE EXECUTIVE SESSION, ALL OR A PORTION OF THE DISCUSSION DURING THE EXECUTIVE SESSION CONSTITUTES A PRIVILEGED ATTORNEY-CLIENT COMMUNICATION, NO RECORD SHALL BE REQUIRED TO BE KEPT OF THE PART OF THE DISCUSSION THAT CONSTITUTES A PRIVILEGED ATTORNEY-CLIENT COMMUNICATION. ANY ELECTRONIC RECORD OF SAID EXECUTIVE SESSION DISCUSSION SHALL REFLECT THAT NO FURTHER RECORD WAS KEPT OF THE DISCUSSION BASED ON THE OPINION OF THE ATTORNEY REPRESENTING THE LOCAL PUBLIC BODY, AS STATED FOR THE RECORD DURING THE EXECUTIVE SESSION, THAT THE DISCUSSION CONSTITUTES A PRIVILEGED ATTORNEY-CLIENT COMMUNICATION. ANY WRITTEN MINUTES SHALL CONTAIN A SIGNED STATEMENT FROM THE ATTORNEY REPRESENTING THE LOCAL PUBLIC BODY ATTESTING THAT THE PORTION OF THE EXECUTIVE SESSION THAT WAS NOT RECORDED CONSTITUTED A PRIVILEGED ATTORNEY-CLIENT COMMUNICATION IN THE OPINION OF THE ATTORNEY AND A SIGNED STATEMENT FROM THE CHAIR OF THE EXECUTIVE SESSION ATTESTING THAT THE PORTION OF THE EXECUTIVE SESSION THAT WAS NOT RECORDED WAS CONFINED TO THE TOPIC AUTHORIZED FOR DISCUSSION IN AN EXECUTIVE SESSION PURSUANT TO SUBSECTION (4) OF THIS SECTION.

(C) IF A COURT FINDS, UPON APPLICATION OF A PERSON SEEKING ACCESS TO THE RECORD OF THE EXECUTIVE SESSION OF A LOCAL PUBLIC BODY IN ACCORDANCE WITH SECTION 24-72-204 (5.5) AND AFTER AN IN CAMERA REVIEW OF THE RECORD OF THE EXECUTIVE SESSION, THAT THE LOCAL PUBLIC BODY ENGAGED IN SUBSTANTIAL DISCUSSION OF ANY MATTERS NOT ENUMERATED IN SUBSECTION (4) OF THIS SECTION OR THAT THE BODY ADOPTED A PROPOSED POLICY, POSITION, RESOLUTION, RULE, REGULATION, OR FORMAL ACTION IN THE EXECUTIVE SESSION IN CONTRAVENTION OF SUBSECTION (4) OF THIS SECTION, THE PORTION OF THE RECORD OF THE EXECUTIVE SESSION THAT REFLECTS THE SUBSTANTIAL DISCUSSION OF MATTERS NOT ENUMERATED IN SUBSECTION (4) OF THIS SECTION OR THE ADOPTION OF A PROPOSED POLICY, POSITION, RESOLUTION, RULE, REGULATION, OR FORMAL ACTION SHALL BE OPEN TO PUBLIC INSPECTION PURSUANT TO SECTION 24-72-204 (5.5).

(D) NO PORTION OF THE RECORD OF AN EXECUTIVE SESSION OF A LOCAL PUBLIC BODY SHALL BE OPEN FOR PUBLIC INSPECTION OR SUBJECT TO DISCOVERY IN ANY ADMINISTRATIVE OR JUDICIAL PROCEEDING, EXCEPT UPON THE CONSENT OF THE LOCAL PUBLIC BODY OR AS PROVIDED IN SUB-SUBPARAGRAPH (C) OF THIS SUBPARAGRAPH (II) AND SECTION 24-72-204 (5.5).

(E) THE RECORD OF AN EXECUTIVE SESSION OF A LOCAL PUBLIC BODY RECORDED PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II) SHALL BE RETAINED FOR AT LEAST NINETY DAYS AFTER THE DATE OF THE EXECUTIVE SESSION.

SECTION 2. The introductory portions to 24-6-402 (3) (a) and (4) and 24-6-402 (3) (b) and (4) (f), Colorado Revised Statutes, are amended to read:

24-6-402. Meetings - open to public. (3) (a) The members of a state public body subject to this part 4, upon the announcement by the state public body to the public of the topic for discussion in the executive session, INCLUDING SPECIFIC CITATION TO THE PROVISION OF THIS SUBSECTION (3) AUTHORIZING THE BODY TO MEET IN AN EXECUTIVE SESSION AND IDENTIFICATION OF THE PARTICULAR MATTER TO BE DISCUSSED IN AS MUCH DETAIL AS POSSIBLE WITHOUT COMPROMISING THE PURPOSE FOR WHICH THE EXECUTIVE SESSION IS AUTHORIZED, and the affirmative vote of two-thirds of the entire membership of the body after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the matters enumerated in paragraph (b) of this subsection (3) or the following matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action, EXCEPT THE REVIEW, APPROVAL, AND AMENDMENT OF THE MINUTES OF AN EXECUTIVE SESSION RECORDED PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (d.5) OF SUBSECTION (2) OF THIS SECTION, shall occur at any executive session that is not open to the public:

(b) (I) All meetings held by members of a state public body subject to this part 4 to consider the appointment or employment of a public official or employee or the dismissal, discipline, promotion, demotion, or compensation of, or the investigation of charges or complaints against, a public official or employee shall be open to the public unless said applicant, official, or employee requests an executive session. Governing boards of institutions of higher education including the regents of the university of Colorado may, upon their own affirmative vote, hold executive sessions to consider the matters listed in this paragraph (b). Executive sessions may be held to review administrative actions regarding investigation of charges or complaints and attendant investigative reports against students where public disclosure could adversely affect the person or persons involved, unless the students have specifically consented to or requested the disclosure of such matters. An executive session may be held only at a regular or special meeting of the state public body and only upon the announcement by the public body to the public of the topic for discussion in the executive session and the affirmative vote of two-thirds of the entire membership of the body after such announcement.

(II) THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) SHALL NOT APPLY TO DISCUSSIONS CONCERNING ANY MEMBER OF THE STATE PUBLIC BODY, ANY ELECTED OFFICIAL, OR THE APPOINTMENT OF A PERSON TO FILL THE OFFICE OF A MEMBER OF THE STATE PUBLIC BODY OR AN ELECTED OFFICIAL OR TO DISCUSSIONS OF PERSONNEL POLICIES THAT DO NOT REQUIRE THE DISCUSSION OF MATTERS PERSONAL TO PARTICULAR EMPLOYEES.

(4) The members of a local public body subject to this part 4, upon the announcement by the local public body to the public of the topic for discussion in the executive session, INCLUDING SPECIFIC CITATION TO THE PROVISION OF THIS SUBSECTION (4) AUTHORIZING THE BODY TO MEET IN AN EXECUTIVE SESSION AND

IDENTIFICATION OF THE PARTICULAR MATTER TO BE DISCUSSED IN AS MUCH DETAIL AS POSSIBLE WITHOUT COMPROMISING THE PURPOSE FOR WHICH THE EXECUTIVE SESSION IS AUTHORIZED, and the affirmative vote of two-thirds of the quorum present, after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the following matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action, EXCEPT THE REVIEW, APPROVAL, AND AMENDMENT OF THE MINUTES OF AN EXECUTIVE SESSION RECORDED PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (d.5) OF SUBSECTION (2) OF THIS SECTION, shall occur at any executive session that is not open to the public:

(f) (I) Personnel matters except if the employee who is the subject of the session has requested an open meeting, or if the personnel matter involves more than one employee, all of the employees have requested an open meeting. With respect to hearings held pursuant to the "Teacher Employment, Compensation, and Dismissal Act of 1990", article 63 of title 22, C.R.S., the provisions of section 22-63-302 (7) (a), C.R.S., shall govern in lieu of the provisions of this subsection (4).

(II) THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (f) SHALL NOT APPLY TO DISCUSSIONS CONCERNING ANY MEMBER OF THE LOCAL PUBLIC BODY, ANY ELECTED OFFICIAL, OR THE APPOINTMENT OF A PERSON TO FILL THE OFFICE OF A MEMBER OF THE LOCAL PUBLIC BODY OR AN ELECTED OFFICIAL OR TO DISCUSSIONS OF PERSONNEL POLICIES THAT DO NOT REQUIRE THE DISCUSSION OF MATTERS PERSONAL TO PARTICULAR EMPLOYEES.

SECTION 3. 24-72-204 (3) (a) (XI) (A), (5), and (6) (a), Colorado Revised Statutes, are amended, and the said 24-72-204 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

24-72-204. Allowance or denial of inspection - grounds - procedure - appeal.

(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 under this subsection (3):

(XI) (A) Records submitted by or on behalf of an applicant or candidate for an executive position as defined in section 24-72-202 (1.3) who is not a finalist. ~~if the applicant or candidate makes a written request that the records be kept confidential at the time of submission of the records.~~ For purposes of this subparagraph (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 chosen for an interview or who is still being considered for the position twenty-one days prior to making the appointment, whichever comes first; except that, if six or fewer applicants or candidates are competing for the executive position, "finalist" means all applicants or candidates A MEMBER OF THE FINAL GROUP OF APPLICANTS OR CANDIDATES MADE PUBLIC 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.

(5) EXCEPT AS PROVIDED IN SUBSECTION (5.5) OF THIS SECTION, any person denied

the right to inspect any record covered by this part 2 may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why ~~he~~ THE CUSTODIAN should not permit the inspection of such record; EXCEPT THAT, AT LEAST THREE BUSINESS DAYS PRIOR TO FILING AN APPLICATION WITH THE DISTRICT COURT, THE PERSON WHO HAS BEEN DENIED THE RIGHT TO INSPECT THE RECORD SHALL FILE A WRITTEN NOTICE WITH THE CUSTODIAN WHO HAS DENIED THE RIGHT TO INSPECT THE RECORD INFORMING SAID CUSTODIAN THAT THE PERSON INTENDS TO FILE AN APPLICATION WITH THE DISTRICT COURT. Hearing on such application shall be held at the earliest practical time. Unless the court finds that the denial of the right of inspection was proper, it shall order the custodian to permit such inspection and ~~upon a finding that the denial was arbitrary or capricious, it may order the custodian personally to pay the applicant's court costs and attorney fees in an amount to be determined by the court~~ SHALL AWARD COURT COSTS AND REASONABLE ATTORNEY FEES TO THE PREVAILING APPLICANT IN AN AMOUNT TO BE DETERMINED BY THE COURT; EXCEPT THAT NO COURT COSTS AND ATTORNEY FEES SHALL BE AWARDED TO A PERSON WHO HAS FILED A LAWSUIT AGAINST A STATE PUBLIC BODY OR LOCAL PUBLIC BODY AND WHO APPLIES TO THE COURT FOR AN ORDER PURSUANT TO THIS SUBSECTION (5) FOR ACCESS TO RECORDS OF THE STATE PUBLIC BODY OR LOCAL PUBLIC BODY BEING SUED IF THE COURT FINDS THAT THE RECORDS BEING SOUGHT ARE RELATED TO THE PENDING LITIGATION AND ARE DISCOVERABLE PURSUANT TO CHAPTER 4 OF THE COLORADO RULES OF CIVIL PROCEDURE. IN THE EVENT THE COURT FINDS THAT THE DENIAL OF THE RIGHT OF INSPECTION WAS PROPER, THE COURT SHALL AWARD COURT COSTS AND REASONABLE ATTORNEY FEES TO THE CUSTODIAN IF THE COURT FINDS THAT THE ACTION WAS FRIVOLOUS, VEXATIOUS, OR GROUNDLESS.

(5.5) (a) ANY PERSON SEEKING ACCESS TO THE RECORD OF AN EXECUTIVE SESSION MEETING OF A STATE PUBLIC BODY OR A LOCAL PUBLIC BODY RECORDED PURSUANT TO SECTION 24-6-402 (2) (d.5) SHALL, UPON APPLICATION TO THE DISTRICT COURT FOR THE DISTRICT WHEREIN THE RECORDS ARE FOUND, SHOW GROUNDS SUFFICIENT TO SUPPORT A REASONABLE BELIEF THAT THE STATE PUBLIC BODY OR LOCAL PUBLIC BODY ENGAGED IN SUBSTANTIAL DISCUSSION OF ANY MATTERS NOT ENUMERATED IN SECTION 24-6-402 (3) OR (4) OR THAT THE STATE PUBLIC BODY OR LOCAL PUBLIC BODY ADOPTED A PROPOSED POLICY, POSITION, RESOLUTION, RULE, REGULATION, OR FORMAL ACTION IN THE EXECUTIVE SESSION IN CONTRAVENTION OF SECTION 24-6-402 (3) (a) OR (4). IF THE APPLICANT FAILS TO SHOW GROUNDS SUFFICIENT TO SUPPORT SUCH REASONABLE BELIEF, THE COURT SHALL DENY THE APPLICATION AND, IF THE COURT FINDS THAT THE APPLICATION WAS FRIVOLOUS, VEXATIOUS, OR GROUNDLESS, THE COURT SHALL AWARD COURT COSTS AND ATTORNEY FEES TO THE PREVAILING PARTY. IF AN APPLICANT SHOWS GROUNDS SUFFICIENT TO SUPPORT SUCH REASONABLE BELIEF, THE APPLICANT CANNOT BE FOUND TO HAVE BROUGHT A FRIVOLOUS, VEXATIOUS, OR GROUNDLESS ACTION, REGARDLESS OF THE OUTCOME OF THE IN CAMERA REVIEW.

(b) (I) UPON FINDING THAT SUFFICIENT GROUNDS EXIST TO SUPPORT A REASONABLE BELIEF THAT THE STATE PUBLIC BODY OR LOCAL PUBLIC BODY ENGAGED IN SUBSTANTIAL DISCUSSION OF ANY MATTERS NOT ENUMERATED IN SECTION 24-6-402 (3) OR (4) OR THAT THE STATE PUBLIC BODY OR LOCAL PUBLIC BODY ADOPTED A PROPOSED POLICY, POSITION, RESOLUTION, RULE, REGULATION, OR FORMAL ACTION IN THE EXECUTIVE SESSION IN CONTRAVENTION OF SECTION 24-6-402 (3) (a) OR (4), THE COURT SHALL CONDUCT AN IN CAMERA REVIEW OF THE RECORD OF THE

EXECUTIVE SESSION TO DETERMINE WHETHER THE STATE PUBLIC BODY OR LOCAL PUBLIC BODY ENGAGED IN SUBSTANTIAL DISCUSSION OF ANY MATTERS NOT ENUMERATED IN SECTION 24-6-402 (3) OR (4) OR ADOPTED A PROPOSED POLICY, POSITION, RESOLUTION, RULE, REGULATION, OR FORMAL ACTION IN THE EXECUTIVE SESSION IN CONTRAVENTION OF SECTION 24-6-402 (3) (a) OR (4).

(II) IF THE COURT DETERMINES, BASED ON THE IN CAMERA REVIEW, THAT VIOLATIONS OF THE OPEN MEETINGS LAW OCCURRED, THE PORTION OF THE RECORD OF THE EXECUTIVE SESSION THAT REFLECTS THE SUBSTANTIAL DISCUSSION OF MATTERS NOT ENUMERATED IN SECTION 24-6-402 (3) OR (4) OR THE ADOPTION OF A PROPOSED POLICY, POSITION, RESOLUTION, RULE, REGULATION, OR FORMAL ACTION SHALL BE OPEN TO PUBLIC INSPECTION.

(6) (a) If, in the opinion of the official custodian of any public record, disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection OR IF THE OFFICIAL CUSTODIAN IS UNABLE, IN GOOD FAITH, AFTER EXERCISING REASONABLE DILIGENCE, AND AFTER REASONABLE INQUIRY, TO DETERMINE IF DISCLOSURE OF THE PUBLIC RECORD IS PROHIBITED PURSUANT TO THIS PART 2, the official custodian may apply to the district court of the district in which such record is located for an order permitting him or her to restrict such disclosure OF FOR THE COURT TO DETERMINE IF DISCLOSURE IS PROHIBITED. Hearing on such application shall be held at the earliest practical time. IN THE CASE OF A RECORD THAT IS OTHERWISE AVAILABLE TO PUBLIC INSPECTION PURSUANT TO THIS PART 2, after a hearing, the court may, ~~issue such an order~~ upon a finding that disclosure would cause substantial injury to the public interest, ISSUE AN ORDER AUTHORIZING THE OFFICIAL CUSTODIAN TO RESTRICT DISCLOSURE. IN THE CASE OF A RECORD THAT MAY BE PROHIBITED FROM DISCLOSURE PURSUANT TO THIS PART 2, AFTER A HEARING, THE COURT MAY, UPON A FINDING THAT DISCLOSURE OF THE RECORD IS PROHIBITED, ISSUE AN ORDER DIRECTING THE OFFICIAL CUSTODIAN NOT TO DISCLOSE THE RECORD TO THE PUBLIC. In ~~such~~ AN ACTION BROUGHT PURSUANT TO THIS PARAGRAPH (a), the burden of proof shall be upon the custodian. The person seeking permission to examine the record shall have notice of said hearing served upon him or her in the manner provided for service of process by the Colorado rules of civil procedure and shall have the right to appear and be heard. THE ATTORNEY FEES PROVISION OF SUBSECTION (5) OF THIS SECTION SHALL NOT APPLY IN CASES BROUGHT PURSUANT TO THIS PARAGRAPH (a) BY AN OFFICIAL CUSTODIAN WHO IS UNABLE TO DETERMINE IF DISCLOSURE OF A PUBLIC RECORD IS PROHIBITED UNDER THIS PART 2 IF THE OFFICIAL CUSTODIAN PROVES AND THE COURT FINDS THAT THE CUSTODIAN, IN GOOD FAITH, AFTER EXERCISING REASONABLE DILIGENCE, AND AFTER MAKING REASONABLE INQUIRY, WAS UNABLE TO DETERMINE IF DISCLOSURE OF THE PUBLIC RECORD WAS PROHIBITED WITHOUT A RULING BY THE COURT.

SECTION 4. 24-72-202, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-72-202. Definitions. As used in this part 2, unless the context otherwise requires:

(8) FOR PURPOSES OF SUBSECTIONS (6) AND (6.5) OF THIS SECTION AND SECTIONS 24-72-203 (2) (b) AND 24-6-402 (2) (d) (III), THE MEMBERS OF THE COLORADO

REAPPORTIONMENT COMMISSION SHALL BE CONSIDERED ELECTED OFFICIALS.

SECTION 5. 24-4-103 (4) (a.5), Colorado Revised Statutes, is amended to read:

24-4-103. Rule-making - procedure. (4) (a.5) SUBJECT TO THE PROVISIONS OF SECTION 24-72-204 (3) (a) (IV), any study or other documentation utilized by an agency as the basis of a proposed rule shall be a public document in accordance with the provisions of part 2 of article 72 of this title and shall be open for public inspection. SUBJECT TO THE PROVISIONS OF SECTION 24-72-204 (3) (a) (IV), all information, including, but not limited to, THE CONCLUSIONS AND UNDERLYING research data FROM ANY STUDIES, REPORTS, published papers, and documents, used by the agency in the development of a proposed rule shall be a public document in accordance with the provisions of part 2 of article 72 of this title and shall be open for public inspection.

SECTION 6. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: June 5, 2001