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HOUSE BILL 12-1036

BY REPRESENTATIVE(S) Kerr J., Labuda, Coram, Court, Murray;
also SENATOR(S) Boyd, Aguilar, Foster, Heath, Lambert, Newell,
Schwartz, White, Williams S.

CONCERNING CLARIFICATION OF THE EXEMPTION FROM THE "COLORADO
OPEN RECORDS ACT" FOR INVESTIGATIVE FILES.

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

SECTION 1. In Colorado Revised Statutes, 24-72-204, **add** (2) (a)
(IX) as follows:

**24-72-204. Allowance or denial of inspection - grounds -
procedure - appeal - definitions.** (2) (a) The custodian may deny the right
of inspection of the following records, unless otherwise provided by law,
on the ground that disclosure to the applicant would be contrary to the
public interest:

(IX) (A) ANY RECORDS OF ONGOING CIVIL OR ADMINISTRATIVE
INVESTIGATIONS CONDUCTED BY THE STATE OR AN AGENCY OF THE STATE
IN FURTHERANCE OF THEIR STATUTORY AUTHORITY TO PROTECT THE PUBLIC
HEALTH, WELFARE, OR SAFETY UNLESS THE INVESTIGATION FOCUSES ON A
PERSON OR PERSONS INSIDE OF THE INVESTIGATIVE AGENCY.

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

(B) UPON CONCLUSION OF A CIVIL OR ADMINISTRATIVE INVESTIGATION THAT IS CLOSED BECAUSE NO FURTHER INVESTIGATION, DISCIPLINE, OR OTHER AGENCY RESPONSE IS WARRANTED, ALL RECORDS NOT EXEMPT PURSUANT TO ANY OTHER LAW ARE OPEN TO INSPECTION; EXCEPT THAT THE CUSTODIAN MAY REMOVE THE NAME OR OTHER PERSONAL IDENTIFYING OR FINANCIAL INFORMATION OF WITNESSES OR TARGETS OF SUCH CLOSED INVESTIGATIONS FROM INVESTIGATIVE RECORDS PRIOR TO INSPECTION.

(C) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBPARAGRAPH (IX), A RECORD IS NOT SUBJECT TO WITHHOLDING ON THE GROUNDS THAT IT IS MAINTAINED OR KEPT IN A CIVIL OR ADMINISTRATIVE INVESTIGATIVE FILE EXCEPT PURSUANT TO PARAGRAPH (a) OF SUBSECTION (6) OF THIS SECTION IF THE RECORD WAS PUBLICLY DISCLOSED; WAS FILED WITH AN AGENCY OF THE STATE BY A REGULATED ENTITY UNDER A STATUTORY, REGULATORY, OR PERMIT REQUIREMENT; OR WAS RECEIVED FROM A GOVERNMENTAL ENTITY AND WOULD BE AVAILABLE IF REQUESTED DIRECTLY FROM THE TRANSMITTING ENTITY.

(D) NOTHING IN THIS SUBPARAGRAPH (IX) PROHIBITS AN AGENCY FROM DISCLOSING INFORMATION OR MATERIALS DURING AN OPEN INVESTIGATION IF IT IS IN THE INTEREST OF PUBLIC HEALTH, WELFARE, OR SAFETY.

SECTION 2. In Colorado Revised Statutes, **add** 24-72-205.5 as follows:

24-72-205.5. Public inspection of ballots - stay period - exception to stay for recounts - rules governing public inspection of ballots - legislative declaration - definitions. (1) (a) BY ENACTING THIS SECTION, THE GENERAL ASSEMBLY INTENDS TO PERMIT THE INSPECTION OF BALLOTS UNDER THE CONDITIONS SPECIFIED IN THIS SECTION AND TO PROTECT THE INTEGRITY OF THE ELECTION PROCESS WHILE PROTECTING VOTER PRIVACY AND PRESERVING SECRECY IN VOTING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 8 OF ARTICLE VII OF THE STATE CONSTITUTION.

(b) IN ORDER TO FACILITATE AND ENSURE A CONSISTENT APPLICATION OF THE PROVISIONS OF THIS SECTION ACROSS THE STATE, THE MATTERS ADDRESSED IN THIS SECTION ARE MATTERS OF STATEWIDE

CONCERN.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "BALLOT" MEANS A BALLOT VOTED BY ANY ACCEPTABLE, APPLICABLE, OR LEGAL METHOD THAT IS IN THE CUSTODY OF AN ELECTION OFFICIAL. "BALLOT" INCLUDES ANY DIGITAL IMAGE OR ELECTRONIC REPRESENTATION OF VOTES CAST.

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

(c) "INTERESTED PARTY" MEANS:

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

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

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

(IV) THE AGENT OF AN ISSUE COMMITTEE THAT IS REQUIRED TO REPORT CONTRIBUTIONS PURSUANT TO THE "FAIR CAMPAIGN PRACTICES ACT", ARTICLE 45 OF TITLE 1, C.R.S., THAT EITHER SUPPORTED OR OPPOSED A BALLOT QUESTION OR BALLOT ISSUE THAT IS THE SUBJECT OF THE RECOUNT.

(3) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (3), THE DESIGNATED ELECTION OFFICIAL SHALL NOT FULFILL A REQUEST UNDER THIS PART 2 FOR THE PUBLIC INSPECTION OF BALLOTS DURING THE PERIOD COMMENCING WITH THE FORTY-FIFTH DAY PRECEDING ELECTION DAY AND CONCLUDING WITH THE DATE EITHER BY WHICH THE

DESIGNATED ELECTION OFFICIAL IS REQUIRED TO CERTIFY AN OFFICIAL ABSTRACT OF VOTES CAST FOR THE APPLICABLE CANDIDATE CONTEST OR BALLOT ISSUE OR BALLOT QUESTION PURSUANT TO SECTION 1-10-102 OR 31-10-1205 (1), C.R.S., AS APPLICABLE, OR BY WHICH ANY RECOUNT CONDUCTED IN ACCORDANCE WITH ARTICLE 10.5 OF TITLE 1, C.R.S., OR SECTION 31-10-1207, C.R.S., IS COMPLETED, AS APPLICABLE, WHICHEVER DATE IS LATER. THE DENIAL OF PUBLIC INSPECTION OF BALLOTS AUTHORIZED PURSUANT TO THIS PARAGRAPH (a) SHALL ALSO APPLY TO ANY INTERNAL BATCH REPORTS GENERATED BY A DESIGNATED ELECTION OFFICIAL FOR THE SPECIFIC PURPOSE OF AUDITING BALLOTS RECEIVED IN THE COURSE OF CONDUCTING AN ELECTION.

(b) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE DENIAL OF PUBLIC INSPECTION OF BALLOTS AUTHORIZED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3) SHALL APPLY TO A RECOUNT THAT IS CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 10.5 OF TITLE 1, C.R.S., OR SECTION 31-10-1207, C.R.S., AS APPLICABLE; EXCEPT THAT, DURING THE PERIOD DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (3), AN INTERESTED PARTY MAY INSPECT AND REQUEST COPIES OF BALLOTS IN CONNECTION WITH SUCH RECOUNT WITHOUT HAVING TO OBTAIN A COURT ORDER GRANTING SUCH INSPECTION. IN CONNECTION WITH AN INSPECTION BY AN INTERESTED PARTY AS AUTHORIZED BY THIS PARAGRAPH (b), AN INTERESTED PARTY MAY 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; EXCEPT THAT AN INTERESTED PARTY IS NOT PERMITTED TO HANDLE THE ORIGINAL BALLOTS. EXCEPT AS SPECIFIED IN THIS PARAGRAPH (b), NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT AN INTERESTED PARTY FROM REQUESTING COPIES OF BALLOTS IN CONNECTION WITH A RECOUNT, TO AFFECT THE CONDUCT OF A RECOUNT, OR TO AFFECT THE RIGHTS OF AN INTERESTED PARTY IN CONNECTION WITH A RECOUNT.

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

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

(b) IN CONNECTION WITH THE PUBLIC INSPECTION OF THE BALLOTS TO WHICH THIS SECTION PERTAINS:

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

(II) THE DESIGNATED ELECTION OFFICIAL OR HIS OR HER DESIGNEE SHALL 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;

(III) 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. IN SO FAR AS SUCH BALLOTS ARE NOT ABLE TO BE DUPLICATED WITHOUT IDENTIFYING ELECTOR INFORMATION, THEY ARE NOT AVAILABLE FOR PUBLIC INSPECTION. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, NO BALLOT, OR ANY PORTION THEREOF, MAY BE MADE AVAILABLE FOR INSPECTION WHERE THE BALLOT, OR ANY REQUESTED PORTION THEREOF, IS IDENTICAL IN PRINTED FORM, CONSIDERING A COMBINATION OF THE ELECTION CONTESTS AT ISSUE AND PRECINCT CODING, TO ONLY NINE OR FEWER BALLOTS, OR COMPARABLE PORTIONS THEREOF, AMONG ALL BALLOTS USED IN THE SAME ELECTION. HOWEVER, ANY SUCH BALLOT, OR ANY REQUESTED PORTION

THEREOF, THAT IS IDENTICAL IN PRINTED FORM TO TEN OR MORE BALLOTS, OR COMPARABLE PORTIONS THEREOF, USED IN THE SAME ELECTION MAY BE INSPECTED.

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

(V) 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

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

(5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, NOTHING IN THIS SECTION AFFECTS EITHER THE RIGHTS OF A WATCHER SET FORTH IN THE PROVISIONS OF TITLES 1 AND 31, C.R.S., OR THE OPERATION OF A CANVASS BOARD IN ACCORDANCE WITH THE PROVISIONS OF ARTICLES 1 TO 13 OF TITLE 1, C.R.S.

SECTION 3. Applicability. (1) The provisions of section 1 of this act apply to cases arising on or after August 19, 2011, and nothing in this act shall be interpreted in any way as evidence of legislative intent in cases arising prior to said date.

(2) The provisions of section 2 of this act apply to requests for inspection of ballots submitted on or after the effective date of this act.

SECTION 4. 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.

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO