

First Regular Session  
Seventy-third General Assembly  
STATE OF COLORADO

**PREAMENDED**

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

LLS NO. 21-0285.01 Megan Waples x4348

**HOUSE BILL 21-1051**

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**HOUSE SPONSORSHIP**

**Geitner and Bird,**

**SENATE SPONSORSHIP**

**(None),**

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**House Committees**  
Business Affairs & Labor

**Senate Committees**

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**A BILL FOR AN ACT**

101     **CONCERNING PUBLICLY AVAILABLE INFORMATION ABOUT APPLICANTS**

102     **FOR PUBLIC EMPLOYMENT.**

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**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://leg.colorado.gov>.)*

Under the bill, a state public body conducting a search for a chief executive officer of an agency, authority, institution, or other entity is required to name one or more candidates as finalists and to make the finalist or finalists public prior to making an offer of employment. The application materials of an applicant for any employment position, including an applicant for an executive position who is not a finalist, are

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

not subject to public inspection under the "Colorado Open Records Act". The bill repeals a provision requiring that, if 3 or fewer candidates for an executive position meet the minimum requirements for the position, all of those candidates must be treated as finalists and their application materials are public records.

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

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

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

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

11               (c) Multiple state district courts have interpreted these provisions  
12 to require a state or local public body to name more than one applicant as  
13 a finalist for that position;

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

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

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

9                   **SECTION 2.** In Colorado Revised Statutes, 24-6-402, amend  
10               (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

1 to prohibit a search committee from holding an executive session to  
2 consider appointment or employment matters not described in this  
3 subsection (3.5) and otherwise authorized by this section.

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

6 **24-72-204. Allowance or denial of inspection - grounds -**  
7 **procedure - appeal - definitions - repeal.** (3) (a) The custodian shall  
8 deny the right of inspection of the following records, unless otherwise  
9 provided by law; except that any of the following records, other than  
10 letters of reference concerning employment, licensing, or issuance of  
11 permits, shall be available to the person in interest pursuant to this  
12 subsection (3):

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

26 (B) The provisions of this subparagraph (XI) THIS SUBSECTION  
27 (3)(a)(XI) shall not be construed to prohibit the public inspection or

1       copying of any records submitted by or on behalf of a finalist OR THE  
2       APPLICATIONS OF PAST OR CURRENT EMPLOYEES; except that letters of  
3       reference or medical, psychological, and sociological data concerning  
4       finalists OR PAST OR CURRENT EMPLOYEES shall not be made available for  
5       public inspection or copying.

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

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

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

1 effect unless approved by the people at the general election to be held in  
2 November 2022 and, in such case, will take effect on the date of the  
3 official declaration of the vote thereon by the governor.