

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 21-0285.01 Megan Waples x4348

HOUSE BILL 21-1051

HOUSE SPONSORSHIP

Geitner and Bird, Duran, Kipp

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House Committees
Business Affairs & Labor

Senate Committees
State, Veterans, & Military Affairs

A BILL FOR AN ACT

101 **CONCERNING PUBLICLY AVAILABLE INFORMATION ABOUT APPLICANTS**
102 **FOR PUBLIC EMPLOYMENT.**

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.*

SENATE
2nd Reading Unamended
April 27, 2021

HOUSE
3rd Reading Unamended
April 1, 2021

HOUSE
Amended 2nd Reading
March 30, 2021

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.

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

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

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

11 **24-6-402. Meetings - open to public - legislative declaration -**
12 **definitions.** (3.5) A search committee of a state public body or local
13 public body shall establish job search goals, including the writing of the
14 job description, deadlines for applications, requirements for applicants,
15 selection procedures, and the time frame for appointing or employing a
16 chief executive officer of an agency, authority, institution, or other entity
17 at an open meeting. The state or local public body shall NAME ONE OR
18 MORE CANDIDATES AS FINALISTS FOR THE POSITION OF CHIEF EXECUTIVE
19 OFFICER. THE STATE OR LOCAL PUBLIC BODY SHALL make public the list
20 ~~of all~~ FINALIST OR finalists under consideration for the position of chief
21 executive officer no later than fourteen days prior to appointing or
22 employing ~~one of the finalists~~ A FINALIST to fill the position. No offer of
23 appointment or employment shall be made prior to this public notice.
24 Records submitted by or on behalf of a finalist for such position shall be
25 subject to ~~the provisions of section 24-72-204 (3)(a)(XI). As used in this~~
26 ~~subsection (3.5), "finalist" shall have the same meaning as in section~~
27 ~~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.