

CHAPTER 23

GOVERNMENT - STATE

SENATE BILL 24-157

BY SENATOR(S) Fenberg, Buckner, Coleman, Cutter, Exum, Fields, Hansen, Hinrichsen, Michaelson Jenet, Priola, Rodriguez, Gonzales, Jaquez Lewis, Marchman, Sullivan;
also REPRESENTATIVE(S) McCluskie and deGruy Kennedy, Amabile, Bird, Boesenecker, Daugherty, Duran, Froelich, Garcia, Jodeh, Lindsay, Lindstedt, McCormick, McLachlan, Sirota, Snyder, Titone, Bacon, English, Herod, Kipp, Ortiz, Ricks.

AN ACT**CONCERNING CLARIFYING THE APPLICATION OF THE COLORADO OPEN MEETINGS LAW TO THE COLORADO GENERAL ASSEMBLY.**

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

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

(a) The United States and Colorado constitutions each create tripartite systems of government centered around representative legislative bodies, which our founders envisioned would arrive at sound policy through deliberation of the needs and values of their constituents;

(b) Legislators take an oath of office to faithfully fulfill the duties of their position, which calls upon them to craft policy, establish the state budget, vote on legislation, and provide oversight of state departments;

(c) The general assembly commits to ensuring open access to the deliberation of public business and the formation of public policy because the democratic process necessitates transparent discourse on policy matters of statewide importance;

(d) The general assembly considers legislation through a dynamic, iterative process, the outcome of which is determined by legislators' votes, which are recorded, posted publicly, and take place in open meetings both in committees and on the floors of each chamber;

(e) A fundamental component of the legislative process is a legislator's ability to

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.

understand other legislators' positions on a piece of legislation, which is inherently necessary to legislators' ability to successfully enact legislation into law;

(f) The general assembly is distinct from any other state public body based on the volume and broad scope of the legislation it considers, the limited duration of its legislative sessions, and its large membership of one hundred legislators;

(g) The policy-making function of the general assembly is furthered by the often informal, direct flow and sharing of information, research, and ideas between and among legislators concerning policy positions and legislation;

(h) The caucus whips, a traditional position in legislative bodies, play a particularly important role in facilitating communication and information gathering concerning legislators' positions and votes on legislation, as do individual legislators who sponsor the legislation;

(i) Several constitutional provisions grant power to and impose requirements on the general assembly and affect the manner in which the general assembly operates, including:

(I) Section 20 of article V of the state constitution, often referred to as "GAVEL" or "Give a Vote to Every Legislator", which creates a transparent and open process for all legislation that is introduced in the general assembly by requiring that:

(A) Every introduced bill be assigned to a committee of reference;

(B) The committee consider each bill assigned to the committee on its merits; and

(C) The committee take formal action on each bill;

(II) Section 22a of article V of the state constitution, which was initiated to prohibit legislators from requiring or committing themselves to a caucus position, ensuring autonomy for individual legislators and allowing for the free debate of the merits of matters pending before the general assembly throughout the legislative process;

(III) Section 1 of article V of the state constitution, which vests the legislative power of the state in the general assembly, thereby establishing the plenary authority of the general assembly, which authority is restricted only by constitutional requirements or prohibitions; and

(IV) Section 12 of article V of the state constitution, which vests each house of the general assembly with the power to determine the rules of its proceedings;

(j) In addition to constitutional provisions that affect the procedures of the general assembly, various state laws also affect the general assembly, including the Colorado open meetings law set forth in part 4 of article 6 of title 24, Colorado Revised Statutes;

(k) While the general assembly is one of multiple state public bodies subject to the Colorado open meetings law, there has been considerable ambiguity about how

to apply the law to the general assembly, largely stemming from a lack of clarity about what constitutes "public business";

(l) Additionally, terminology in the Colorado open meetings law is outdated and does not take into account how electronic communications have evolved to become a ubiquitous and necessary form of communication to any modern workplace, including for the general assembly;

(m) The "Colorado Open Records Act", part 2 of article 72 of title 24, Colorado Revised Statutes, governs access to physical and electronic public records of the general assembly, and all custodians of public records are required to make public records available pursuant to the terms of that act; and

(n) The general assembly seeks to clarify key provisions and terminology in the Colorado open meetings law as it relates to the legislative procedures of the general assembly, acknowledging an interest in protecting the openness of, transparency of, and public inclusion in the legislative process.

SECTION 2. In Colorado Revised Statutes, 24-6-402, **add** (2.5) as follows:

24-6-402. Meetings - open to public - legislative declaration - definitions.

(2.5) (a) FOR PURPOSES OF APPLYING SUBSECTIONS (2)(c)(I) AND (2)(d)(I) OF THIS SECTION TO A MEETING OF A STATE PUBLIC BODY OF THE GENERAL ASSEMBLY, A QUORUM MUST BE CONTEMPORANEOUS.

(b) NOTWITHSTANDING SUBSECTIONS (1)(b) AND (2)(d)(III) OF THIS SECTION, ANY FORM OF WRITTEN COMMUNICATION, ELECTRONIC OR OTHERWISE, EXCHANGED BY TWO OR MORE MEMBERS OF THE GENERAL ASSEMBLY IS NOT SUBJECT TO THIS PART 4, BUT ANY RECORDS OF THE COMMUNICATION ARE SUBJECT TO DISCLOSURE TO THE EXTENT REQUIRED BY THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24.

(c) FOR PURPOSES OF THE APPLICATION OF THIS PART 4 TO THE GENERAL ASSEMBLY, "PUBLIC BUSINESS":

(I) MEANS:

(A) INTRODUCED LEGISLATION, INCLUDING BILLS, RESOLUTIONS, AND MEMORIALS;

(B) PROPOSED LEGISLATION, WHICH INCLUDES A BILL, RESOLUTION, OR MEMORIAL, IF A DRAFT OF THE PROPOSED LEGISLATION PREPARED BY THE OFFICE OF LEGISLATIVE LEGAL SERVICES IS BEING DISCUSSED BY A QUORUM OF A STATUTORY COMMITTEE OR A COMMITTEE OF REFERENCE DURING A REGULAR OR SPECIAL LEGISLATIVE SESSION OF THE GENERAL ASSEMBLY OR BY A QUORUM OF ANY TYPE OF INTERIM COMMITTEE; OR

(C) OTHER MATTERS BEFORE A STATUTORY COMMITTEE, ANY TYPE OF INTERIM COMMITTEE, OR A COMMITTEE OF REFERENCE; AND

(II) DOES NOT INCLUDE MATTERS THAT ARE BY NATURE INTERPERSONAL,

ADMINISTRATIVE, OR LOGISTICAL OR THAT CONCERN PERSONNEL, PLANNING, PROCESS, TRAINING, OR OPERATIONS, IF THE MERITS OR SUBSTANCE OF MATTERS SET FORTH IN SUBSECTION (2.5)(c)(I) OF THIS SECTION ARE NOT DISCUSSED. AS USED IN THIS SUBSECTION (2.5)(c)(II), "MERITS OR SUBSTANCE" HAS THE SAME MEANING AS SET FORTH IN SUBSECTION (2)(d)(III) OF THIS SECTION.

SECTION 3. In Colorado Revised Statutes, 2-3-303, **add** (3)(i) as follows:

2-3-303. Functions - report - definitions. (3) (i) (I) (A) ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (3)(i)(I)(A), BUT BEFORE DECEMBER 31, 2024, ON OR AFTER JANUARY 1, 2025, BUT BEFORE DECEMBER 31, 2025, AND ON OR AFTER JANUARY 1, 2026, BUT BEFORE DECEMBER 31, 2026, THE EXECUTIVE COMMITTEE SHALL CONSIDER THE APPLICATION OF SECTION 24-6-402 TO THE GENERAL ASSEMBLY AT A MEETING OF THE EXECUTIVE COMMITTEE. THE EXECUTIVE COMMITTEE SHALL ALLOW THE OPPORTUNITY TO RECEIVE PUBLIC COMMENT IN CONNECTION WITH THE MEETING.

(B) THIS SUBSECTION (3)(i)(I) IS REPEALED, EFFECTIVE JULY 1, 2027.

(II) ON OR AFTER JANUARY 1, 2027, UPON REQUEST BY A MEMBER OF THE EXECUTIVE COMMITTEE, THE EXECUTIVE COMMITTEE SHALL CONSIDER THE APPLICATION OF SECTION 24-6-402 TO THE GENERAL ASSEMBLY AT A MEETING OF THE EXECUTIVE COMMITTEE. THE EXECUTIVE COMMITTEE SHALL ALLOW THE OPPORTUNITY TO RECEIVE PUBLIC COMMENT IN CONNECTION WITH THE MEETING.

SECTION 4. Applicability. This act applies to meetings of the general assembly, state public bodies of the general assembly, and members of the general assembly occurring on or after the effective date of this act.

SECTION 5. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions.

Approved: March 12, 2024