

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

ENGROSSED

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

LLS NO. 23-0927.01 Megan McCall x4215

HOUSE BILL 23-1259

HOUSE SPONSORSHIP

Daugherty and Evans,

SENATE SPONSORSHIP

Zenzinger and Simpson,

House Committees

State, Civic, Military, & Veterans Affairs

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING PROVISIONS IN THE OPEN MEETINGS LAW FOR AN**
102 **EXECUTIVE SESSION OF A LOCAL PUBLIC BODY, AND, IN**
103 **CONNECTION THEREWITH, CREATING A LOCAL PUBLIC BODY'S**
104 **RIGHT TO CURE A VIOLATION OF THE OPEN MEETINGS LAW FOR**
105 **AN EXECUTIVE SESSION, ADDING PREREQUISITES FOR A PERSON**
106 **TO CHALLENGE A VIOLATION BY A LOCAL PUBLIC BODY OF THE**
107 **OPEN MEETINGS LAW FOR AN EXECUTIVE SESSION, AND**
108 **PERMITTING A LOCAL PUBLIC BODY TO RECOVER COSTS AND**
109 **ATTORNEY FEES IN AN ACTION FOR A VIOLATION BY A LOCAL**
110 **PUBLIC BODY OF THE EXECUTIVE SESSION PROVISIONS IF THE**
111 **PREREQUISITES ARE NOT MET OR IF THE LOCAL PUBLIC BODY**
112 **HAS CURED THE VIOLATION.**

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

HOUSE
Amended 2nd Reading
April 13, 2023

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>.)

The bill creates a right for a local public body to cure a violation of the open meetings law with respect to an executive session if the local public body takes the corrective action at its next meeting after the meeting at which the violation occurred or at the local public body's next meeting that is held at least 14 days after receiving notice by a person who intends to challenge the violation. The bill requires that, in order to have standing, a person who intends to challenge a violation of the open meetings law by a local public body in connection with an executive session must first provide notice to the secretary or clerk of the local public body and the parties must meet or communicate before the next meeting of the local public body to determine if the challenge can be resolved without filing with the court. If the local public body cures the violation, a person does not have standing to challenge the violation.

Under current law, if the court finds a violation of the open meetings law, a prevailing citizen is entitled to costs and reasonable attorney fees. If the court does not find a violation, the prevailing party may recover costs and reasonable attorney fees if the court finds that the action was frivolous, vexatious, or groundless. The bill creates an additional allowance in connection with a challenge filed that concerns an action by a local public body for an executive session to allow a local public body to recover costs and reasonable attorney fees if the court determines the person filing the challenge has not complied with the notice requirements or that the local public body has cured the violation.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-6-402, **amend**
3 (9)(b); and **add** (4.5) and (9)(c) as follows:

4 **24-6-402. Meetings - open to public - legislative declaration -**
5 **definitions.** (4.5) (a) (I) A LOCAL PUBLIC BODY HAS THE RIGHT TO CURE
6 A VIOLATION OF SUBSECTION (4) OF THIS SECTION. AS USED IN THIS
7 SUBSECTION (4.5), "CURE" MEANS THE LOCAL PUBLIC BODY SATISFIES THE

1 REQUIREMENTS SET FORTH IN SUBSECTIONS (4.5)(a)(II) AND (4.5)(a)(III)
2 OF THIS SECTION.

3 (II) A LOCAL PUBLIC BODY CURES A VIOLATION OF SUBSECTION (4)
4 OF THIS SECTION BY REVISING ITS ANNOUNCEMENT OF THE TOPIC FOR
5 DISCUSSION THAT WAS PREVIOUSLY IN VIOLATION OF SUBSECTION (4) OF
6 THIS SECTION EITHER:

7 (A) AT THE NEXT MEETING OF THE LOCAL PUBLIC BODY AFTER THE
8 MEETING AT WHICH THE VIOLATION OCCURRED; OR

9 (B) AT THE NEXT MEETING OF THE LOCAL PUBLIC BODY THAT IS
10 HELD AT LEAST FOURTEEN DAYS AFTER RECEIPT OF THE NOTICE REQUIRED
11 PURSUANT TO SUBSECTION (4.5)(b)(I) OF THIS SECTION.

12 (III) THE REVISED ANNOUNCEMENT AND VOTE TO HOLD THE
13 EXECUTIVE SESSION MUST COMPLY WITH THE REQUIREMENTS OF THIS
14 SECTION AND IDENTIFY THE PURPOSE OF THE EXECUTIVE SESSION AND
15 PROVIDE ADEQUATE DETAIL REGARDING THE EXECUTIVE SESSION AS
16 REQUIRED BY SUBSECTION (4) OF THIS SECTION.

17 (IV) AN EXECUTIVE SESSION THAT IS ENTERED INTO FOR A
18 PURPOSE NOT AUTHORIZED BY SUBSECTION (4) OF THIS SECTION CANNOT
19 BE CURED.

20 (V) NOTWITHSTANDING THE PROVISIONS OF THIS SUBSECTION
21 (4.5), A LOCAL PUBLIC BODY DOES NOT HAVE THE RIGHT TO CURE A
22 FAILURE TO PROPERLY ANNOUNCE AN EXECUTIVE SESSION THAT IS IN
23 VIOLATION OF SUBSECTION (4) OF THIS SECTION FOR A PURPOSE
24 AUTHORIZED BY SUBSECTION (4)(a), (4)(b), (4)(c), (4)(d), (4)(e), (4)(f),
25 (4)(g), (4)(h), OR (4)(i) OF THIS SECTION IF THE VIOLATION IS THE THIRD
26 VIOLATION COMMITTED BY THE LOCAL PUBLIC BODY IN FAILING TO
27 PROPERLY ANNOUNCE AN EXECUTIVE SESSION AUTHORIZED BY THE SAME

1 SUBSECTION (4)(a), (4)(b), (4)(c), (4)(d), (4)(e), (4)(f), (4)(g), (4)(h), OR
2 (4)(i) OF THIS SECTION WITHIN A ONE-YEAR PERIOD FROM THE FIRST
3 VIOLATION.

4 (b) (I) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (9)(a)
5 OF THIS SECTION, A PERSON DOES NOT HAVE STANDING TO CHALLENGE A
6 LOCAL PUBLIC BODY'S ACTION TAKEN PURSUANT TO SUBSECTION (4) OF
7 THIS SECTION UNTIL THE PERSON FILES WRITTEN NOTICE WITH THE
8 SECRETARY OR CLERK OF THE LOCAL PUBLIC BODY AT LEAST FOURTEEN
9 DAYS BEFORE A REGULAR MEETING OF THE PUBLIC BODY. THE NOTICE
10 MUST IDENTIFY THE ACTION FOR WHICH THE PERSON INTENDS TO FILE A
11 CLAIM WITH A COURT OF RECORD CHALLENGING THE LOCAL PUBLIC BODY
12 FOR A VIOLATION OF SUBSECTION (4) OF THIS SECTION.

13 (II) AFTER RECEIPT OF THE NOTICE THAT IS REQUIRED PURSUANT
14 SUBSECTION (4.5)(b)(I) OF THIS SECTION, AND BEFORE THE NEXT REGULAR
15 MEETING OF THE LOCAL PUBLIC BODY, THE SECRETARY OR CLERK OF THE
16 LOCAL PUBLIC BODY, OR A DESIGNATED REPRESENTATIVE OF THE LOCAL
17 PUBLIC BODY, SHALL MEET IN PERSON OR OTHERWISE COMMUNICATE WITH
18 THE PERSON WHO FILED THE NOTICE TO DETERMINE IF THE CHALLENGE
19 CAN BE RESOLVED WITHOUT FILING THE CHALLENGE WITH A COURT
20 PURSUANT TO SUBSECTION (9) OF THIS SECTION. DETERMINING IF THE
21 PERSON'S CHALLENGE CAN BE RESOLVED INCLUDES WORKING TOGETHER
22 TO DEVELOP A SOLUTION TO THE DEFICIENCY OF THE PRIOR
23 ANNOUNCEMENT OF THE EXECUTIVE SESSION THAT IS ALLEGED TO BE IN
24 VIOLATION OF SUBSECTION (4) OF THIS SECTION TO ADDRESS THE PERSON'S
25 CHALLENGE AND COMPLY WITH THE REQUIREMENTS OF SUBSECTION (4) OF
26 THIS SECTION.

27

1 (c) IF A CHALLENGE IS FILED PURSUANT TO SUBSECTION (9) OF THIS
2 SECTION CONCERNING AN ACTION TAKEN BY A LOCAL PUBLIC BODY
3 PURSUANT TO ANY PROVISION OF SUBSECTION (4) OF THIS SECTION AND
4 THE COURT DETERMINES THAT THE LOCAL PUBLIC BODY HAS CURED
5 THE VIOLATION PURSUANT TO SUBSECTION (4.5)(a) OF THIS SECTION, THE
6 COURT SHALL AWARD COSTS AND REASONABLE ATTORNEY FEES TO THE
7 LOCAL PUBLIC BODY.

8 (9) (b) The courts of record of this state shall have jurisdiction to
9 issue injunctions to enforce the purposes of this section upon application
10 by any citizen of this state. EXCEPT AS OTHERWISE PROVIDED IN
11 SUBSECTION (9)(c) OF THIS SECTION, in any action in which the court finds
12 a violation of this section, the court shall award the citizen prevailing in
13 such action costs and reasonable attorney fees. In the event the court does
14 not find a violation of this section, it shall award costs and reasonable
15 attorney fees to the prevailing party if the court finds that the action was
16 frivolous, vexatious, or groundless.

17 (c) A PRO SE PLAINTIFF IN AN ACTION CHALLENGING A LOCAL
18 PUBLIC BODY FOR A VIOLATION OF SUBSECTION (2)(d.5)(II) OR (4) OF THIS
19 SECTION OR FOR A VIOLATION OF SUBSECTION (2)(d)(II) OF THIS SECTION
20 ONLY AS IT RELATES TO AN EXECUTIVE SESSION HELD AT A MEETING, IS
21 NOT ENTITLED TO AN AWARD OF COSTS OR ATTORNEY FEES, NOR MAY
22 COSTS OR ATTORNEY FEES BE ASSESSED AGAINST A PRO SE PLAINTIFF
23 UNLESS OTHERWISE ALLOWED BY SUBSECTION (9)(b) OF THIS SECTION.

24 **SECTION 2. Applicability.** This act applies to challenges to a
25 violation by a local public body of section 24-6-402 (4), C.R.S., brought
26 on or after the effective date of this act.

27 **SECTION 3. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, or safety.