

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

**PREAMENDED**

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

LLS NO. 23-0927.01 Megan McCall x4215

**HOUSE BILL 23-1259**

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**HOUSE SPONSORSHIP**

**Daugherty and Evans, Bird, Hamrick, Kipp**

**SENATE SPONSORSHIP**

**Zenzinger and Simpson,**

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**House Committees**

State, Civic, Military, & Veterans Affairs

**Senate Committees**

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**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 AND ADDING PREREQUISITES FOR A**  
106            **PERSON TO CHALLENGE A VIOLATION BY A LOCAL PUBLIC BODY**  
107            **OF THE OPEN MEETINGS LAW FOR AN EXECUTIVE SESSION.**

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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>.)*

*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 3rd Reading  
April 14, 2023

HOUSE  
Amended 2nd Reading  
April 13, 2023

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.

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

10 (II) A LOCAL PUBLIC BODY CURES A VIOLATION OF SUBSECTION (4)  
11 OF THIS SECTION BY REVISING ITS ANNOUNCEMENT OF THE TOPIC FOR

1 DISCUSSION THAT WAS PREVIOUSLY IN VIOLATION OF SUBSECTION (4) OF  
2 THIS SECTION EITHER:

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

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

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

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

16 (V) NOTWITHSTANDING THE PROVISIONS OF THIS SUBSECTION  
17 (4.5), A LOCAL PUBLIC BODY DOES NOT HAVE THE RIGHT TO CURE A  
18 FAILURE TO PROPERLY ANNOUNCE AN EXECUTIVE SESSION THAT IS IN  
19 VIOLATION OF SUBSECTION (4) OF THIS SECTION FOR A PURPOSE  
20 AUTHORIZED BY SUBSECTION (4)(a), (4)(b), (4)(c), (4)(d), (4)(e), (4)(f),  
21 (4)(g), (4)(h), OR (4)(i) OF THIS SECTION IF THE VIOLATION IS THE THIRD  
22 VIOLATION COMMITTED BY THE LOCAL PUBLIC BODY IN FAILING TO  
23 PROPERLY ANNOUNCE AN EXECUTIVE SESSION AUTHORIZED BY THE SAME  
24 SUBSECTION (4)(a), (4)(b), (4)(c), (4)(d), (4)(e), (4)(f), (4)(g), (4)(h), OR  
25 (4)(i) OF THIS SECTION WITHIN A ONE-YEAR PERIOD FROM THE FIRST  
26 VIOLATION.

27 (b) (I) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (9)(a)

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

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

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25 (9) (b) The courts of record of this state shall have jurisdiction to  
26 issue injunctions to enforce the purposes of this section upon application  
27 by any citizen of this state. EXCEPT AS OTHERWISE PROVIDED IN

1 SUBSECTION (9)(c) OF THIS SECTION, in any action in which the court finds  
2 a violation of this section, the court shall award the citizen prevailing in  
3 such action costs and reasonable attorney fees. In the event the court does  
4 not find a violation of this section, it shall award costs and reasonable  
5 attorney fees to the prevailing party if the court finds that the action was  
6 frivolous, vexatious, or groundless.

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

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

17 **SECTION 3. Safety clause.** The general assembly hereby finds,  
18 determines, and declares that this act is necessary for the immediate  
19 preservation of the public peace, health, or safety.