

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

PREAMENDED

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

LLS NO. 24-1032.01 Megan McCall x4215

SENATE BILL 24-157

SENATE SPONSORSHIP

Fenberg, Buckner, Coleman, Cutter, Exum, Fields, Hansen, Hinrichsen, Michaelson Jenet, Priola, Rodriguez

HOUSE SPONSORSHIP

McCluskie and deGruy Kennedy, Amabile, Bird, Boesenecker, Daugherty, Duran, Froelich, Garcia, Jodeh, Lindsay, Lindstedt, McCormick, McLachlan, Sirota, Snyder, Titone

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 **CONCERNING CLARIFYING THE APPLICATION OF THE COLORADO OPEN**
102 **MEETINGS LAW TO THE COLORADO GENERAL ASSEMBLY.**

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 Colorado open meetings law (COML), any meeting of a body of the general assembly at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of a body of the general assembly is in attendance or expected to be in attendance can only be held after full and timely notice to the public. In addition, the COML requires that minutes

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.

of the meeting be taken and promptly recorded.

The bill makes several changes and clarifications concerning the application of the COML to the general assembly and its members. Specifically, the bill provides that, for purposes of applying the notice and minutes provisions under the COML, a quorum of a state public body of the general assembly must be contemporaneous.

Additionally, the bill establishes that written communication, electronic or otherwise, exchanged between members of the general assembly are not subject to the COML but any records of the communications are subject to disclosure to the extent required by the "Colorado Open Records Act".

The bill also defines "public business", for purposes of the application of the COML to the general assembly, as introduced legislation, including bills, resolutions, and memorials, or other matters before a statutory committee, any type of interim committee, or a committee of reference. However, "public business" does not include matters that are by nature interpersonal, administrative, or logistical or that concern personnel, planning, process, training, or operations, as long as the merits or substance of matters that are expressly defined as being public business are not discussed.

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

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

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

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

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

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

5 (e) A fundamental component of the legislative process is a
6 legislator's ability to understand other legislators' positions on a piece of
7 legislation, which is inherently necessary to legislators' ability to
8 successfully enact legislation into law;

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

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

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

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

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

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

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

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

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

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

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

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

22 (k) While the general assembly is one of multiple state public
23 bodies subject to the Colorado open meetings law, there has been
24 considerable ambiguity about how to apply the law to the general
25 assembly, largely stemming from a lack of clarity about what constitutes
26 "public business";

27 (l) Additionally, terminology in the Colorado open meetings law

1 is outdated and does not take into account how electronic
2 communications have evolved to become a ubiquitous and necessary form
3 of communication to any modern workplace, including for the general
4 assembly;

5 (m) The "Colorado Open Records Act", part 2 of article 72 of title
6 24, Colorado Revised Statutes, governs access to physical and electronic
7 public records of the general assembly, and all custodians of public
8 records are required to make public records available pursuant to the
9 terms of that act; and

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

15 **SECTION 2.** In Colorado Revised Statutes, 24-6-402, **add**
16 (2.5) as follows:

17 **24-6-402. Meetings - open to public - legislative declaration -**
18 **definitions.** (2.5) (a) FOR PURPOSES OF APPLYING SUBSECTIONS (2)(c)(I)
19 AND (2)(d)(I) OF THIS SECTION TO A MEETING OF A STATE PUBLIC BODY OF
20 THE GENERAL ASSEMBLY, A QUORUM MUST BE CONTEMPORANEOUS.

21 (b) NOTWITHSTANDING SUBSECTIONS (1)(b) AND (2)(d)(III) OF
22 THIS SECTION, ANY FORM OF WRITTEN COMMUNICATION, ELECTRONIC OR
23 OTHERWISE, EXCHANGED BY TWO OR MORE MEMBERS OF THE GENERAL
24 ASSEMBLY IS NOT SUBJECT TO THIS PART 4, BUT ANY RECORDS OF THE
25 COMMUNICATION ARE SUBJECT TO DISCLOSURE TO THE EXTENT REQUIRED
26 BY THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE
27 24.

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

3 (I) MEANS:

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

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

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

15 (II) DOES NOT INCLUDE MATTERS THAT ARE BY NATURE
16 INTERPERSONAL, ADMINISTRATIVE, OR LOGISTICAL OR THAT CONCERN
17 PERSONNEL, PLANNING, PROCESS, TRAINING, OR OPERATIONS, IF THE
18 MERITS OR SUBSTANCE OF MATTERS SET FORTH IN SUBSECTION (2.5)(c)(I)
19 OF THIS SECTION ARE NOT DISCUSSED. AS USED IN THIS SUBSECTION
20 (2.5)(c)(II), "MERITS OR SUBSTANCE" HAS THE SAME MEANING AS SET
21 FORTH IN SUBSECTION (2)(d)(III) OF THIS SECTION.

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

24 **2-3-303. Functions - report - definitions. (3) (i) UPON REQUEST**
25 **BY A MEMBER OF THE EXECUTIVE COMMITTEE, THE EXECUTIVE**
26 **COMMITTEE SHALL CONSIDER THE APPLICATION OF SECTION 24-6-402 TO**
27 **THE GENERAL ASSEMBLY AT A MEETING OF THE EXECUTIVE COMMITTEE.**

1 THE EXECUTIVE COMMITTEE SHALL ALLOW THE OPPORTUNITY TO RECEIVE
2 PUBLIC COMMENT IN CONNECTION WITH THE MEETING.

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

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