A BILL FOR AN ACT

CONCERNING CLARIFYING THE APPLICATION OF THE COLORADO OPEN 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
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.

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 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, amend (2)(a); and add (2.5) as follows:

24-6-402. Meetings - open to public - legislative declaration - definitions. (2) (a) All meetings of two or more members of any state public body at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times, EXCEPT AS OTHERWISE PROVIDED BY LAW.

    (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; OR

(B) 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. Applicability. This act applies to meetings of the
genral 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 4. 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.