

CHAPTER 2

GOVERNMENT - STATE

SENATE BILL 06-009

BY SENATOR(S) Mitchell, Grossman, Evans, Fitz-Gerald, Gordon, Groff, Johnson, Kester, McElhany, Shaffer, Teck, Tochtrop, and Tupa;
also REPRESENTATIVE(S) McGihon, Carroll T., Witwer, Benefield, Berens, Carroll M., Coleman, Frangas, May M., Penry, and Stafford.

AN ACT**CONCERNING A REQUIREMENT THAT DISCUSSIONS OCCURRING IN EXECUTIVE SESSIONS OF PUBLIC BODIES BE ELECTRONICALLY RECORDED.**

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

SECTION 1. 24-6-402 (2) (d.5) (I) (A), (2) (d.5) (I) (B), (2) (d.5) (II) (A), and (2) (d.5) (II) (B), Colorado Revised Statutes, are amended to read:

24-6-402. Meetings - open to public - definitions. (2) (d.5) (I) (A) Discussions that occur in an executive session of a state public body shall be ELECTRONICALLY recorded. ~~in the same manner and media that the state public body uses to record the minutes of open meetings.~~ If a state public body electronically recorded the minutes of its open meetings on or after August 8, 2001, the state public body shall continue to electronically record the minutes of its open meetings that occur on or after August 8, 2001; except that electronic recording shall not be required for two successive meetings of the state public body while the regularly used electronic equipment is inoperable. A state public body may satisfy the ELECTRONIC recording requirements of this sub-subparagraph (A) by making any form of electronic recording of the discussions in an executive session of the state public body. Except as provided in sub-subparagraph (B) of this subparagraph (I), the ~~record~~ ELECTRONIC RECORDING of an executive session shall reflect the specific citation to the provision in subsection (3) of this section that authorizes the state public body to meet in an executive session AND the actual contents of the discussion during the session. ~~and a signed statement from the chair of the executive session attesting that any written minutes substantially reflect the substance of the discussions during the executive session. For purposes of this sub-subparagraph (A), "actual contents of the discussion" shall not be construed to require the minutes of an executive session~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~to contain a verbatim transcript of the discussion during said executive session.~~ The provisions of this sub-subparagraph (A) shall not apply to discussions of individual students by a state public body pursuant to paragraph (b) of subsection (3) of this section.

(B) If, in the opinion of the attorney who is representing the state public body and is in attendance at ~~the~~ AN executive session THAT HAS BEEN PROPERLY ANNOUNCED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION, all or a portion of the discussion during the executive session constitutes a privileged attorney-client communication, no record OR ELECTRONIC RECORDING shall be required to be kept of the part of the discussion that constitutes a privileged attorney-client communication. ~~Any~~ THE electronic ~~record~~ RECORDING of said executive session discussion shall reflect that no further record OR ELECTRONIC RECORDING was kept of the discussion based on the opinion of the attorney representing the state public body, as stated for the record during the executive session, that the discussion ~~constitutes~~ CONSTITUTED a privileged attorney-client communication, ~~Any written minutes shall contain a signed statement from~~ OR the attorney representing the state public body MAY PROVIDE A SIGNED STATEMENT attesting that the portion of the executive session that was not recorded constituted a privileged attorney-client communication in the opinion of the attorney. ~~and a signed statement from the chair of the executive session attesting that the portion of the executive session that was not recorded was confined to the topic authorized for discussion in an executive session pursuant to subsection (3) of this section.~~

(II) (A) Discussions that occur in an executive session of a local public body shall be ELECTRONICALLY recorded. ~~in the same manner and media that the local public body uses to record the minutes of open meetings.~~ If a local public body electronically recorded the minutes of its open meetings on or after August 8, 2001, the local public body shall continue to electronically record the minutes of its open meetings that occur on or after August 8, 2001; except that electronic recording shall not be required for two successive meetings of the local public body while the regularly used electronic equipment is inoperable. A local public body may satisfy the ELECTRONIC recording requirements of this sub-subparagraph (A) by making any form of electronic recording of the discussions in an executive session of the local public body. Except as provided in sub-subparagraph (B) of this subparagraph (II), the ~~record~~ ELECTRONIC RECORDING of an executive session shall reflect the specific citation to the provision in subsection (4) of this section that authorizes the local public body to meet in an executive session AND the actual contents of the discussion during the session. ~~and a signed statement from the chair of the executive session attesting that any written minutes substantially reflect the substance of the discussions during the executive session.~~ For purposes of this sub-subparagraph (A), "actual contents of the discussion" shall not be construed to require the minutes of an executive session to contain a verbatim transcript of the ~~discussion during said executive session.~~ The provisions of this sub-subparagraph (A) shall not apply to discussions of individual students by a local public body pursuant to paragraph (h) of subsection (4) of this section.

(B) If, in the opinion of the attorney who is representing the local public body and who is in attendance at ~~the~~ AN executive session THAT HAS BEEN PROPERLY ANNOUNCED PURSUANT TO SUBSECTION (4) OF THIS SECTION, all or a portion of the discussion during the executive session constitutes a privileged attorney-client

communication, no record OR ELECTRONIC RECORDING shall be required to be kept of the part of the discussion that constitutes a privileged attorney-client communication. ~~Any~~ THE electronic ~~record~~ RECORDING of said executive session discussion shall reflect that no further record OR ELECTRONIC RECORDING was kept of the discussion based on the opinion of the attorney representing the local public body, as stated for the record during the executive session, that the discussion ~~constitutes~~ CONSTITUTED a privileged attorney-client communication, ~~Any written minutes shall contain a signed statement from~~ OR the attorney representing the local public body MAY PROVIDE A SIGNED STATEMENT attesting that the portion of the executive session that was not recorded constituted a privileged attorney-client communication in the opinion of the attorney. ~~and a signed statement from the chair of the executive session attesting that the portion of the executive session that was not recorded was confined to the topic authorized for discussion in an executive session pursuant to subsection (4) of this section.~~

SECTION 2. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 9, 2006, if adjournment sine die is on May 10, 2006); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to discussions occurring in an executive session of a state public body or local public body on or after the effective date of this act.

Approved: February 23, 2006