

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

REENGROSSED

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

LLS NO. 14-0357.01 Bob Lackner x4350

HOUSE BILL 14-1110

HOUSE SPONSORSHIP

Peniston,

SENATE SPONSORSHIP

Hodge,

House Committees
Education

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING PROCEDURES GOVERNING DISCUSSIONS BY BOARDS OF**
102 **EDUCATION OF SCHOOL DISTRICTS WHILE MEETING IN**
103 **EXECUTIVE SESSION.**

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://www.leg.state.co.us/billsummaries>.)

Under current law, the minutes of a meeting of a local public body during which an executive session is held are required to reflect the topic of the discussion at the executive session. In the case of a meeting of a local board of education (school board) during which an executive

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
February 13, 2014

HOUSE
Amended 2nd Reading
February 12, 2014

session is held, the bill additionally requires the minutes to reflect the amount of time each topic was discussed while the board was meeting in executive session.

Under current law, if, in the opinion of the attorney who is representing the local public body and who is in attendance at an executive session that has been properly announced, all or a portion of the discussion during the executive session constitutes a privileged attorney-client communication, no record or electronic recording of the part of the discussion that constitutes a privileged attorney-client communication may be made. The bill eliminates this requirement for school boards. Accordingly, discussions occurring in an executive session of such body that must be electronically recorded include all or any part of the executive session that is claimed by the attorney representing the local public body either to constitute a privileged attorney-client communication or to be subject to protection as trial preparation material.

The bill additionally requires a school board to maintain a privilege log that will allow identification of each portion of the executive session as to which the claim of privileged attorney-client communication or right to protection as trial preparation material is made. The privilege log is required to describe the topic of the communications not disclosed, and the approximate time in the executive session during which the communications not disclosed were discussed, in such manner that, without revealing information itself privileged or protected, other parties are enabled to assess the applicability of the privilege or right to protection. The bill further permits the school board to make a separate recording of that portion of the executive session as to which the claim of privileged attorney-client communication or right to protection as trial preparation material is made.

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

2 **SECTION 1.** In Colorado Revised Statutes, 22-32-108, **amend**
3 (5) (a); and **add** (5) (d) as follows:

4 **22-32-108. Meetings of the board of education - legislative**
5 **intent.** (5) (a) All regular and special meetings of the board shall be open
6 to the public, but the board may require any person who disturbs good
7 order to leave. At any regular or special meeting the board may proceed
8 in executive session IN ACCORDANCE WITH THE REQUIREMENTS OF THIS
9 PARAGRAPH (a) AND PARAGRAPH (d) OF THIS SUBSECTION (5). Only those

1 persons invited by the board may be present during executive session, and
2 the board shall not make final policy decisions while in executive session.
3 At the special meeting of the board called pursuant to section 22-32-104
4 (1), each board member shall sign an affidavit stating that the board
5 member is aware of and will comply with the confidentiality requirements
6 and restrictions applicable to executive sessions of the board, as described
7 in section 24-6-402, C.R.S., regardless of whether the board member
8 participates in the executive session in person or electronically in
9 accordance with the board policy adopted pursuant to subsection (7) of
10 this section. The school district shall keep and preserve the affidavits with
11 the minutes of board meetings and other board documents.

12 (d) (I) IN THE CASE OF A MEETING OF A BOARD OF EDUCATION
13 DURING WHICH AN EXECUTIVE SESSION IS HELD, THE MINUTES OF THE
14 MEETING MUST INDICATE THE TOPIC OF THE DISCUSSION AT THE
15 EXECUTIVE SESSION IN ACCORDANCE WITH THE PROVISIONS OF SECTION
16 24-6-402 (2) (d) (II), C.R.S., AS WELL AS THE AMOUNT OF TIME EACH
17 TOPIC WAS DISCUSSED WHILE THE BOARD WAS MEETING IN EXECUTIVE
18 SESSION. THE MINUTES ALONG WITH THE AMOUNT OF TIME EACH TOPIC
19 WAS DISCUSSED MUST BE POSTED ON THE WEB SITE OF THE BOARD OF
20 EDUCATION NOT LATER THAN TEN BUSINESS DAYS FOLLOWING THE
21 MEETING AT WHICH THE MINUTES ARE APPROVED BY THE BOARD. IF THE
22 BOARD OF EDUCATION DOES NOT MAINTAIN A WEB SITE, THE MINUTES
23 MUST BE PUBLISHED IN THE SAME MANNER AS THE BOARD REGULARLY
24 PROVIDES PUBLIC NOTICE.

25 (II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN THE
26 CASE OF A BOARD OF EDUCATION, THE RECORDING OF AN EXECUTIVE
27 SESSION THAT IS REQUIRED BY SECTION 24-6-402 (2) (d.5) (II) (A), C.R.S.,

1 MUST INCLUDE ALL OR ANY PORTION OF THE EXECUTIVE SESSION THAT IS
2 CLAIMED BY THE ATTORNEY REPRESENTING THE BOARD OF EDUCATION
3 EITHER TO CONSTITUTE A PRIVILEGED ATTORNEY-CLIENT COMMUNICATION
4 OR TO BE SUBJECT TO PROTECTION AS TRIAL PREPARATION MATERIAL. THE
5 BOARD OF EDUCATION SHALL MAINTAIN A PRIVILEGE LOG THAT WILL
6 ALLOW IDENTIFICATION OF EACH PORTION OF THE EXECUTIVE SESSION AS
7 TO WHICH THE CLAIM OF PRIVILEGED ATTORNEY-CLIENT COMMUNICATION
8 OR RIGHT TO PROTECTION AS TRIAL PREPARATION MATERIAL IS MADE. THE
9 PRIVILEGE LOG MUST INDICATE THE TOPIC OF THE COMMUNICATIONS NOT
10 DISCLOSED, AND THE APPROXIMATE TIME IN THE EXECUTIVE SESSION
11 DURING WHICH THE COMMUNICATIONS NOT DISCLOSED WERE DISCUSSED,
12 IN SUCH MANNER THAT, WITHOUT REVEALING INFORMATION ITSELF
13 PRIVILEGED OR PROTECTED, A COURT MAY ASSESS THE APPLICABILITY OF
14 THE PRIVILEGE OR RIGHT TO PROTECTION UNDER SECTION 24-6-402, C.R.S.
15 ANY PORTION OF THE EXECUTIVE SESSION AS TO WHICH THE CLAIM OF
16 PRIVILEGED ATTORNEY-CLIENT COMMUNICATION OR RIGHT TO
17 PROTECTION AS TRIAL PREPARATION MATERIAL IS MADE MAY BE
18 RECORDED SEPARATELY FROM THE RECORDING OF THE PORTION OF THE
19 EXECUTIVE SESSION TO WHICH NO CLAIM OF PRIVILEGE OR RIGHT TO
20 PROTECTION AS TRIAL PREPARATION MATERIAL IS MADE.

21 (IV) THE COURTS OF RECORD OF THIS STATE HAVE JURISDICTION
22 TO ISSUE INJUNCTIONS TO ENFORCE THE PROVISIONS OF THIS PARAGRAPH
23 (d) UPON APPLICATION BY ANY CITIZEN OF THE STATE.

24 **SECTION 2.** In Colorado Revised Statutes, 24-6-402, **amend** (2)
25 (d.5) (II) (B) as follows:

26 **24-6-402. Meetings - open to public - definitions.**
27 (2) (d.5) (II) (B) EXCEPT AS OTHERWISE PROVIDED IN SECTION 22-32-108

1 (5) (d), C.R.S., if, in the opinion of the attorney who is representing the
2 local public body and who is in attendance at an executive session that
3 has been properly announced pursuant to subsection (4) of this section,
4 all or a portion of the discussion during the executive session constitutes
5 a privileged attorney-client communication, no record or electronic
6 recording shall be required to be kept of the part of the discussion that
7 constitutes a privileged attorney-client communication. The electronic
8 recording of said executive session discussion shall reflect that no further
9 record or electronic recording was kept of the discussion based on the
10 opinion of the attorney representing the local public body, as stated for
11 the record during the executive session, that the discussion constituted a
12 privileged attorney-client communication, or the attorney representing the
13 local public body may provide a signed statement attesting that the
14 portion of the executive session that was not recorded constituted a
15 privileged attorney-client communication in the opinion of the attorney.

16 **SECTION 3. Applicability.** This act applies to meetings of local
17 boards of education that take place on or after the effective date of this
18 act.

19 **SECTION 4. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, and safety.