

CHAPTER 142

GOVERNMENT — STATE

SENATE BILL 91-33.

BY SENATORS Allison, J. Johnson, Bishop, Considine, Gallagher, Leeds, Martinez, Mendez, Pascoe, Pastore, Peterson, Roberts, Tebedo, Trujillo, and Wham;
also REPRESENTATIVES Faatz, Acquafresca, Adkins, Agler, Berry, Chlouber, DeHerrera, Duke, Fagan, Fish, Fleming, Foster, Grant, Greenwood, P. Hernandez, T. Hernandez, Jerke, S. Johnson, Jones, June, Kerns, Killian, Knox, Kopel, Mares, Moellenberg, Owen, Redder, Reeves, Ruddick, Rupert, Shoemaker, Snyder, Sullivan, Tanner, Thiebaut, Tucker, Webb, S. Williams, and Young.

AN ACT

CONCERNING THE OPEN MEETINGS PROVISIONS OF THE "COLORADO SUNSHINE ACT OF 1972".

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

Section 1. 24-6-401, Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

24-6-401. Declaration of policy. It is declared to be A MATTER OF STATEWIDE CONCERN AND the policy of this state that the formation of public policy is public business and may not be conducted in secret.

Section 2. 24-6-402, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

24-6-402. Meetings - open to public. (1) FOR THE PURPOSES OF THIS SECTION:

(a) "LOCAL PUBLIC BODY" MEANS ANY BOARD, COMMITTEE, COMMISSION, AUTHORITY, OR OTHER ADVISORY, POLICY-MAKING, RULE-MAKING, OR FORMALLY CONSTITUTED BODY OF ANY POLITICAL SUBDIVISION OF THE STATE AND ANY PUBLIC OR PRIVATE ENTITY TO WHICH A POLITICAL SUBDIVISION, OR AN OFFICIAL THEREOF, HAS DELEGATED A GOVERNMENTAL DECISION-MAKING FUNCTION BUT DOES NOT INCLUDE PERSONS ON THE ADMINISTRATIVE STAFF OF THE LOCAL PUBLIC BODY.

(b) "MEETING" MEANS ANY KIND OF GATHERING, CONVENED TO DISCUSS PUBLIC BUSINESS, IN PERSON, BY TELEPHONE, OR BY OTHER MEANS OF COMMUNICATION.

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

(c) "POLITICAL SUBDIVISION OF THE STATE" INCLUDES, BUT IS NOT LIMITED TO, ANY COUNTY, CITY, CITY AND COUNTY, TOWN, HOME RULE CITY, HOME RULE COUNTY, HOME RULE CITY AND COUNTY, SCHOOL DISTRICT, SPECIAL DISTRICT, LOCAL IMPROVEMENT DISTRICT, SPECIAL IMPROVEMENT DISTRICT, OR SERVICE DISTRICT.

(d) "STATE PUBLIC BODY" MEANS ANY BOARD, COMMITTEE, COMMISSION, OR OTHER ADVISORY, POLICY-MAKING, RULE-MAKING, DECISION-MAKING, OR FORMALLY CONSTITUTED BODY OF ANY STATE AGENCY, STATE AUTHORITY, OR THE GENERAL ASSEMBLY, THE GOVERNING BOARD OF ANY STATE INSTITUTION OF HIGHER EDUCATION INCLUDING THE REGENTS OF THE UNIVERSITY OF COLORADO, AND ANY PUBLIC OR PRIVATE ENTITY TO WHICH THE STATE, OR AN OFFICIAL THEREOF, HAS DELEGATED A GOVERNMENTAL DECISION-MAKING FUNCTION BUT DOES NOT INCLUDE PERSONS ON THE ADMINISTRATIVE STAFF OF THE STATE PUBLIC BODY.

(1) (2) (a) All meetings of two or more members of any board, committee, commission, or other policy-making or rule-making body of any state agency or authority or of the general assembly, including all meetings of two or more members of the regents of the university of Colorado or any other governing board of a state institution of higher education referred to by the provisions of section 5 of article VIII of the state constitution or otherwise established by law, at which any public business is discussed or at which any formal action may be taken by such board, committee, commission, or other policy-making or rule-making body 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 MAYBE TAKEN are declared to be public meetings open to the public at all times. cxept as may be otherwise provided in the state constitution.

(b) ALL MEETINGS OF A QUORUM OR THREE OR MORE MEMBERS OF ANY LOCAL PUBLIC BODY, WHICHEVER IS FEWER, 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.

(2) (c) Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. IN ADDITION TO ANY OTHER MEANS OF FULL AND TIMELY NOTICE, A LOCAL PUBLIC BODY SHALL BE DEEMED TO HAVE GIVEN FULL AND TIMELY NOTICE IF THE NOTICE OF THE MEETING IS POSTED IN A DESIGNATED PUBLIC PLACE WITHIN THE BOUNDARIES OF THE LOCAL PUBLIC BODY NO LESS THAN TWENTY-FOUR HOURS PRIOR TO THE HOLDING OF THE MEETING. THE PUBLIC PLACE OR PLACES FOR POSTING SUCH NOTICE SHALL BE DESIGNATED ANNUALLY AT THE LOCAL PUBLIC BODY'S FIRST REGULAR MEETING OF EACH CALENDAR YEAR. THE POSTING SHALL INCLUDE SPECIFIC AGENDA INFORMATION WHERE POSSIBLE.

(d) (I) MINUTES OF ANY MEETING OF A STATE PUBLIC BODY SHALL BE TAKEN AND PROMPTLY RECORDED, AND SUCH RECORDS SHALL BE OPEN TO PUBLIC INSPECTION. THE MINUTES OF A MEETING DURING WHICH AN EXECUTIVE SESSION AUTHORIZED UNDER SUBSECTION (3) OF THIS SECTION IS HELD SHALL REFLECT THE GENERAL TOPIC OF THE DISCUSSION AT THE EXECUTIVE SESSION.

(II) MINUTES OF ANY MEETING OF A LOCAL PUBLIC BODY AT WHICH THE ADOPTION OF ANY PROPOSED POLICY, POSITION, RESOLUTION, RULE, REGULATION, OR FORMAL ACTION OCCURS OR COULD OCCUR SHALL BE TAKEN AND PROMPTLY RECORDED, AND SUCH RECORDS SHALL BE OPEN TO PUBLIC INSPECTION. THE MINUTES OF A MEETING DURING WHICH AN EXECUTIVE SESSION AUTHORIZED UNDER SUBSECTION (4) OF THIS SECTION IS HELD SHALL REFLECT THE GENERAL TOPIC OF THE DISCUSSION AT THE EXECUTIVE SESSION.

~~(2.1)~~ (e) This part 4 does not apply to any chance meeting or social gathering at which discussion of public business is not the central purpose.

~~(2.3)~~ (3) (a) The members of a STATE public body subject to this part 4, upon the affirmative vote of two-thirds of the entire membership of the body, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the matters enumerated in subsection ~~(2.5)~~ of this section PARAGRAPH (b) OF THIS SUBSECTION (3) or the following matters; EXCEPT THAT NO ADOPTION OF ANY PROPOSED POLICY, POSITION, RESOLUTION, RULE, REGULATION, OR FORMAL ACTION SHALL OCCUR AT ANY EXECUTIVE SESSION WHICH IS NOT OPEN TO THE PUBLIC:

(a) (I) The purchase of property for public purposes, or the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of the STATE public body shall use this paragraph (a) as a subterfuge for providing covert information to prospective buyers or sellers. Governing boards of state institutions of higher education including the regents of the university of Colorado may also consider the acquisition of property as a gift in an executive session, only if such executive session is requested by the donor.

(b) (II) Conferences with an attorney for the STATE public body concerning disputes involving the public body that are the subject of pending or imminent court action. Governing boards of STATE institutions of higher education including the regents of the university of Colorado may also confer with an attorney concerning specific claims or grievances or for purposes of receiving legal advice on specific legal questions. Mere presence or participation of an attorney at an executive session of a governing board of an A STATE institution of higher education including the regents of the university of Colorado is not sufficient to satisfy the requirements of this subsection ~~(2.3)~~ (3).

(e) (III) Matters required to be kept confidential by federal law or rules or state statutes;

(d) (IV) Specialized details of security arrangements where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law;

(e) (V) Determining positions relative to matters that may be subject to negotiations with employees or employee organizations; developing strategy for and receiving reports on the progress of negotiations; and instructing negotiators;

(f) (VI) With respect to the board of regents of the university of Colorado, matters concerning the modification, initiation, or cessation of patient care programs at the university hospital (including the university of Colorado psychiatric hospital), and receiving reports with regard to any of the above, if premature disclosure of information would give an unfair competitive or bargaining advantage to any person or entity.

(2.5) (b) All meetings held by members of a STATE public body subject to this part 4 to consider the appointment or employment of a public official or employee or the dismissal, discipline, promotion, demotion, or compensation of, or the investigation of charges or complaints against, a public official or employee shall be open to the public unless said applicant, official, or employee requests an executive session. Governing boards of institutions of higher education including the regents of the university of Colorado may, upon their own affirmative vote, hold executive sessions to consider the matters listed in this subsection (2.5) PARAGRAPH (b). Executive sessions may be held to review administrative actions regarding investigation of charges or complaints and attendant investigative reports against students where public disclosure could adversely affect the person or persons involved, unless the students have specifically consented to or requested the disclosure of such matters. An executive session may be held only at a regular or special meeting of the STATE public body and only upon the affirmative vote of two-thirds of the entire membership of the body.

(2.6) (c) Notwithstanding the provisions of subsections (2.3) and (2.5) of this section PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (3), the state board of parole created in part 2 of article 2 of title 17, C.R.S., may proceed in executive session to consider matters connected with any parole proceedings under the jurisdiction of said board; except that no final parole decisions shall be made by said board while in executive session. Such executive session may be held only at a regular or special meeting of the state board of parole and only upon the affirmative vote of two-thirds of the membership of the board present at such meeting.

(4) THE MEMBERS OF A LOCAL PUBLIC BODY SUBJECT TO THIS PART 4, UPON THE AFFIRMATIVE VOTE OF TWO-THIRDS OF THE QUORUM PRESENT, MAY HOLD AN EXECUTIVE SESSION ONLY AT A REGULAR OR SPECIAL MEETING AND FOR THE SOLE PURPOSE OF CONSIDERING ANY OF THE FOLLOWING MATTERS; EXCEPT THAT NO ADOPTION OF ANY PROPOSED POLICY, POSITION, RESOLUTION, RULE, REGULATION, OR FORMAL ACTION SHALL OCCUR AT ANY EXECUTIVE SESSION WHICH IS NOT OPEN TO THE PUBLIC:

(a) THE PURCHASE, ACQUISITION, LEASE, TRANSFER, OR SALE OF ANY REAL, PERSONAL, OR OTHER PROPERTY INTEREST;

EXCEPT THAT NO EXECUTIVE SESSION SHALL BE HELD FOR THE PURPOSE OF CONCEALING THE FACT THAT A MEMBER OF THE LOCAL PUBLIC BODY HAS A PERSONAL INTEREST IN SUCH PURCHASE, ACQUISITION, LEASE, TRANSFER, OR SALE;

(b) CONFERENCES WITH AN ATTORNEY FOR THE LOCAL PUBLIC BODY FOR THE PURPOSES OF RECEIVING LEGAL ADVICE ON SPECIFIC LEGAL QUESTIONS. MERE PRESENCE OR PARTICIPATION OF AN ATTORNEY AT AN EXECUTIVE SESSION OF THE LOCAL PUBLIC BODY IS NOT SUFFICIENT TO SATISFY THE REQUIREMENTS OF THIS SUBSECTION (4);

(c) MATTERS REQUIRED TO BE KEPT CONFIDENTIAL BY FEDERAL OR STATE LAW OR RULES AND REGULATIONS;

(d) SPECIALIZED DETAILS OF SECURITY ARRANGEMENTS OR INVESTIGATIONS;

(e) DETERMINING POSITIONS RELATIVE TO MATTERS THAT MAY BE SUBJECT TO NEGOTIATIONS; DEVELOPING STRATEGY FOR NEGOTIATIONS; AND INSTRUCTING NEGOTIATORS;

(f) PERSONNEL MATTERS EXCEPT IF THE EMPLOYEE WHO IS THE SUBJECT OF THE SESSION HAS REQUESTED AN OPEN MEETING, OR IF THE PERSONNEL MATTER INVOLVES MORE THAN ONE EMPLOYEE, ALL OF THE EMPLOYEES HAVE REQUESTED AN OPEN MEETING. WITH RESPECT TO HEARINGS HELD PURSUANT TO THE "TEACHER EMPLOYMENT, COMPENSATION, AND DISMISSAL ACT OF 1990", ARTICLE 63 OF TITLE 22, C.R.S., THE PROVISIONS OF SECTION 22-63-302 (7) (a), C.R.S., SHALL GOVERN IN LIEU OF THE PROVISIONS OF THIS SUBSECTION (4).

(g) CONSIDERATION OF ANY DOCUMENTS PROTECTED BY THE MANDATORY NONDISCLOSURE PROVISIONS OF PART 2 OF ARTICLE 72 OF THIS TITLE, COMMONLY KNOWN AS THE "OPEN RECORDS ACT";

(h) DISCUSSION OF INDIVIDUAL STUDENTS WHERE PUBLIC DISCLOSURE WOULD ADVERSELY AFFECT THE PERSON OR PERSONS INVOLVED.

(2-7) (5) Prior to the time the members of the public body convene in executive session, the chairman of the body shall announce the general topic of the executive session as enumerated in subsections (2-3) and (2-5) (3) AND (4) of this section.

(2-9) (6) The limitations imposed by subsections (2-3), (2-5), and (2-7) (3), (4), AND (5) of this section do not apply to matters which are covered by section 14 of article V of the state constitution.

(3) (7) The secretary or clerk of each board, committee, commission, or other policy-making or rule-making STATE PUBLIC body shall maintain a list of persons who request notification of all meetings or of meetings when certain specified policies will be discussed and shall provide reasonable advance notification of such meetings.

(4) (8) No resolution, rule, regulation, ordinance, or formal action of a board, committee, commission, or other policy-making or rule-making STATE OR LOCAL PUBLIC body shall be valid unless taken or made at a meeting that meets the requirements of subsections (1) and SUBSECTION (2) of this section.

(5) —The minutes of a meeting of any such board, committee, commission, or other policy-making or rule-making body shall be promptly recorded, and such records shall be open to public inspection. The minutes of executive sessions authorized under subsections (2.3) and (2.5) of this section need only reflect the general subject matter of discussions.

(6) (9) The courts of record of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state. IN ANY ACTION IN WHICH THE COURT FINDS A VIOLATION OF THIS SECTION, THE COURT SHALL AWARD THE CITIZEN PREVAILING IN SUCH ACTION COSTS AND REASONABLE ATTORNEY FEES. IN THE EVENT THE COURT DOES NOT FIND A VIOLATION OF THIS SECTION, IT SHALL AWARD COSTS AND REASONABLE ATTORNEY FEES TO THE PREVAILING PARTY IF THE COURT FINDS THAT THE ACTION WAS FRIVOLOUS, VEXATIOUS, OR GROUNDLESS.

(10) ANY PROVISION OF THIS SECTION DECLARED TO BE UNCONSTITUTIONAL OR OTHERWISE INVALID SHALL NOT IMPAIR THE REMAINING PROVISIONS OF THIS SECTION, AND, TO THIS END, THE PROVISIONS OF THIS SECTION ARE DECLARED TO BE SEVERABLE.

Section 3. Article 9 of title 29, Colorado Revised Statutes, 1986 Repl. Vol., is repealed as follows:

29-9-101. Public meetings. (1)—All meetings of any board, commission, committee, or authority of a political subdivision of the state supported by law in its activities in whole or in part with public funds are declared to be public meetings and open to the public at all times; but such groups, by majority consent of members present, may go into executive session for consideration of documents or testimony given in confidence but shall not make final policy decisions, nor shall any resolution, rule, ordinance, regulation, or formal action or any action approving a contract or calling for the payment of money be adopted or approved at any session which is closed to the general public.

(2)—Any action taken contrary to the provisions of subsection (1) of this section shall be null and void and without force or effect.

(3)—Notwithstanding any provision of subsection (1) of this section, a board of education of a public school district and the governing body of any municipality, county, or special district may meet in executive session to determine its position relative to issues that may be subject to negotiation; to receive reports on negotiations progress and status; to develop strategy; and to instruct its negotiators.

Section 4. 23-3.1-205 (2), Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

23-3.1-205. Meetings of board - quorum - expenses. (2) Pursuant to article 9 of title 29 PART 4 OF ARTICLE 6 OF TITLE 24, C.R.S., each meeting of the board shall be open to the public. Notice of meetings shall be as provided in the bylaws of the authority. Resolutions need not be published or posted, but resolutions and all proceedings and other acts of the board shall be a public record.

Section 5. 25-8.5-109 (4), Colorado Revised Statutes, 1989 Repl. Vol., is amended to read:

25-8.5-109. Meetings. (4) All business of the board shall be conducted only during said regular or special meetings, and all said meetings shall be open to the public, but the board may hold executive sessions as provided in article 9 of title 29 PART 4 OF ARTICLE 6 OF TITLE 24, C.R.S.

Section 6. 25-14-102 (1), Colorado Revised Statutes, 1989 Repl. Vol., is amended to read:

25-14-102. Definitions. (1) "Public meeting" means any meeting required to be open to the public pursuant to part 4 of article 6 of title 24, C.R.S. or article 9 of title 29, C.R.S.

Section 7. 31-25-1210, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

31-25-1210. Meetings. Upon notice to each member of the board, the board shall hold meetings, which shall be held in a place to be designated by the board as often as the needs of the district require. The meetings of the board shall be subject to the provisions of section 29-9-101 PART 4 OF ARTICLE 6 OF TITLE 24, C.R.S. The board shall act by resolution or motion.

Section 8. The introductory portion to 32-10-110 (1) (c), Colorado Revised Statutes, as amended, is amended to read:

32-10-110. Meetings - vacancies. (1) (c) All business of the board shall be conducted only during said regular or special meetings and shall be conducted pursuant to article 9 of title 29 PART 4 OF ARTICLE 6 OF TITLE 24, C.R.S. A majority of the members of the board shall constitute a quorum at any meeting. All special and regular meetings of the board shall be held at locations which are within the boundaries of the district or which are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the meeting location does not exceed twenty miles from the district boundaries. The provisions of this paragraph (c) governing the location of meetings may be waived only if the following criteria are met:

Section 9. 32-14-106 (7), Colorado Revised Statutes, as amended, is amended to read:

32-14-106. Board of directors - membership - qualifications. (7) All business of the board shall be conducted at regular or special meetings which shall be held within the geographical boundaries of the district and which shall be open to the public. The provisions of this subsection (7) and section 29-9-101 PART 4 OF ARTICLE 6 OF TITLE 24, C.R.S., shall apply to all meetings of the board.

Section 10. 37-45-116 (1), Colorado Revised Statutes, 1990 Repl. Vol., is amended to read:

37-45-116. Meetings and records. (1) The meetings of the board of directors of a water conservancy district shall be subject to the requirements of article 9 of title 29 PART 4 OF ARTICLE 6 OF TITLE 24, C.R.S.

Section 11. **Effective date.** This act shall take effect June 1, 1991.

Section 12. **Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 29, 1991