C.R.S. 24-6-402

COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at the Second Regular Session
of the Sixty-Ninth General Assembly of the State of Colorado (2014) ***

TITLE 24. GOVERNMENT - STATE
ADMINISTRATION
ARTICLE 6. **COLORADO SUNSHINE LAW**
PART 4. OPEN MEETINGS LAW

C.R.S. 24-6-402 (2014)

24-6-402. Meetings - open to public - definitions

(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, electronically, or by other means of communication.

(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, governing board of a state institution of higher education including the regents of the university of Colorado, a nonprofit corporation incorporated pursuant to section 23-5-121 (2), C.R.S., or the general assembly, 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.

(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.

(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.

(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 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 topic of the discussion at the executive session.

(III) If elected officials use electronic mail to discuss pending legislation or other public business among themselves, the electronic mail shall be subject to the requirements of this section. Electronic mail communication among elected officials that does not relate to pending legislation or other public business shall not be considered a "meeting" within the meaning of this section.

(IV) Neither a state nor a local public body may adopt any proposed policy, position, resolution, rule, or regulation or take formal action by secret ballot unless otherwise authorized in accordance with the provisions of this subparagraph (IV). Notwithstanding any other provision of this section, a vote to elect leadership of a state or local public body by that same public body may be taken by secret ballot, and a secret ballot may be used in connection with the election by a state or local public body of members of a search committee, which committee is otherwise subject to the requirements of this section, but the outcome of the vote shall be recorded contemporaneously in the minutes of the body in accordance with the requirements of this section. Nothing in this subparagraph (IV) shall be construed to affect the authority of a board of education to use a secret ballot in accordance with the requirements of section 22-32-108 (6), C.R.S. For purposes of this subparagraph (IV), "secret ballot" means a vote cast in such a way that the identity of the person voting or the position taken in such vote is withheld from the public.

(d.5) (I) (A) Discussions that occur in an executive session of a state public body shall be electronically recorded. 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 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. 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 a governing board of a state institution of higher education, including the regents of the university of Colorado, and is in attendance at 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. The electronic 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 governing board of a state institution of higher education, including the regents of the university of Colorado, as stated for the record during the executive session, that the discussion constituted a privileged attorney-client communication, or the attorney representing the governing board of a state institution of higher education, including the regents of the university of Colorado, 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.

(C) If a court finds, upon application of a person seeking access to the record of the executive session of a state public body in accordance with section 24-72-204 (5.5) and after an in camera review of the record of the executive session, that the state public body engaged in substantial discussion of any matters not enumerated in subsection (3) of this section or that the body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of paragraph (a) of subsection (3) of this section, the portion of the record of the executive session that reflects the substantial discussion of matters not enumerated in subsection (3) of this section or the adoption of a proposed policy, position, resolution, rule, regulation, or formal action shall be open to public inspection pursuant to section 24-72-204 (5.5).

(D) No portion of the record of an executive session of a state public body shall be open for public inspection or subject to discovery in any administrative or judicial proceeding, except upon the consent of the state public body or as provided in sub-subparagraph (C) of this subparagraph (I) and section 24-72-204 (5.5).

(E) The record of an executive session of a state public body recorded pursuant to sub-subparagraph (A) of this subparagraph (I) shall be retained for at least ninety days after the date of the executive session.

(II) (A) Discussions that occur in an executive session of a local public body shall be electronically recorded. 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 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. 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 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. The electronic 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 constituted a privileged attorney-client communication, 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.

(C) If a court finds, upon application of a person seeking access to the record of the executive session of a local public body in accordance with section 24-72-204 (5.5) and after an in camera review of the record of the executive session, that the local public body engaged in substantial discussion of any matters not enumerated in subsection (4) of this section or that the body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of subsection (4) of this section, the portion of the record of the executive session that reflects the substantial discussion of matters not enumerated in subsection (4) of this section or the adoption of a proposed policy, position, resolution, rule, regulation, or formal action shall be open to public inspection pursuant to section 24-72-204 (5.5).

(D) No portion of the record of an executive session of a local public body shall be open for public inspection or subject to discovery in any administrative or judicial proceeding, except upon the consent of the local public body or as provided in sub-subparagraph (C) of this subparagraph (II) and section 24-72-204 (5.5).

(E) Except as otherwise required by section 22-32-108 (5) (e), C.R.S., the record of an executive session of a local public body recorded pursuant to sub-subparagraph (A) of this subparagraph (II) shall be retained for at least ninety days after the date of the executive session.

(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.

(f) The provisions of paragraph (c) of this subsection (2) shall not be construed to apply to the day-to-day oversight of property or supervision of employees by county commissioners. Except as set forth in this paragraph (f), the provisions of this paragraph (f) shall not be interpreted to alter any requirements of paragraph (c) of this subsection (2).

(3) (a) The members of a state public body subject to this part 4, upon the announcement by the state public body to the public of the topic for discussion in the executive session, including specific citation to the provision of this subsection (3) authorizing the body to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized, and the affirmative vote of two-thirds of the entire membership of the body after such announcement, 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 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, except the review, approval, and amendment of the minutes of an executive session recorded pursuant to subparagraph (I) of paragraph (d.5) of subsection (2) of this section, shall occur at any executive session that is not open to the public:

(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.

(II) Conferences with an attorney representing the state public body concerning disputes involving the public body that are the subject of pending or imminent court action, 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 state public body is not sufficient to satisfy the requirements of this subsection (3).

(III) Matters required to be kept confidential by federal law or rules, state statutes, or in accordance with the requirements of any joint rule of the senate and the house of representatives pertaining to lobbying practices;

(IV) Specialized details of security arrangements or investigations, including defenses against terrorism, both domestic and foreign, and including 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;

(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 such negotiations; and instructing negotiators;

(VI) With respect to the board of regents of the university of Colorado and the board of directors of the university of Colorado hospital authority created pursuant to article 21 of title 23, C.R.S., matters concerning the modification, initiation, or cessation of patient care programs at the university hospital operated by the university of Colorado hospital authority pursuant to part 5 of article 21 of title 23, C.R.S., (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;

(VII) With respect to nonprofit corporations incorporated pursuant to section 23-5-121 (2), C.R.S., matters concerning trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person;

(VIII) With respect to the governing board of a state institution of higher education and any committee thereof, consideration of nominations for the awarding of honorary degrees, medals, and other honorary awards by the institution and consideration of proposals for the naming of a building or a portion of a building for a person or persons.

(b) (I) 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 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 announcement by the public body to the public of the topic for discussion in the executive session and the affirmative vote of two-thirds of the entire membership of the body after such announcement.

(II) The provisions of subparagraph (I) of this paragraph (b) shall not apply to discussions concerning any member of the state public body, any elected official, or the appointment of a person to fill the office of a member of the state public body or an elected official or to discussions of personnel policies that do not require the discussion of matters personal to particular employees.

(c) Notwithstanding the provisions of 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.

(d) Notwithstanding any provision of paragraph (a) or (b) of this subsection (3) to the contrary, upon the affirmative vote of two-thirds of the members of the governing board of an institution of higher education who are authorized to vote, the governing board may hold an executive session in accordance with the provisions of this subsection (3).

(3.5) A search committee of a state public body or local public body shall establish job search goals, including the writing of the job description, deadlines for applications, requirements for applicants, selection procedures, and the time frame for appointing or employing a chief executive officer of an agency, authority, institution, or other entity at an open meeting. The state or local public body shall make public the list of all finalists under consideration for the position of chief executive officer no later than fourteen days prior to appointing or employing one of the finalists to fill the position. No offer of appointment or employment shall be made prior to this public notice. Records submitted by or on behalf of a finalist for such position shall be subject to the provisions of section 24-72-204 (3) (a) (XI). As used in this subsection (3.5), "finalist" shall have the same meaning as in section 24-72-204 (3) (a) (XI). Nothing in this subsection (3.5) shall be construed to prohibit a search committee from holding an executive session to consider appointment or employment matters not described in this subsection (3.5) and otherwise authorized by this section.

(4) The members of a local public body subject to this part 4, upon the announcement by the local public body to the public of the topic for discussion in the executive session, including specific citation to the provision of this subsection (4) authorizing the body to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized, and the affirmative vote of two-thirds of the quorum present, after such announcement, 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, except the review, approval, and amendment of the minutes of an executive session recorded pursuant to subparagraph (II) of paragraph (d.5) of subsection (2) of this section, shall occur at any executive session that 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. The local public body shall announce the specific citation of the statutes or rules that are the basis for such confidentiality before holding the executive session.

(d) Specialized details of security arrangements or investigations, including defenses against terrorism, both domestic and foreign, and including 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) Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators;

(f) (I) 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).

(II) The provisions of subparagraph (I) of this paragraph (f) shall not apply to discussions concerning any member of the local public body, any elected official, or the appointment of a person to fill the office of a member of the local public body or an elected official or to discussions of personnel policies that do not require the discussion of matters personal to particular employees.

(g) Consideration of any documents protected by the mandatory nondisclosure provisions of the "Colorado Open Records Act", part 2 of article 72 of this title; except that all consideration of documents or records that are work product as defined in section 24-72-202 (6.5) or that are subject to the governmental or deliberative process privilege shall occur in a public meeting unless an executive session is otherwise allowed pursuant to this subsection (4);

(h) Discussion of individual students where public disclosure would adversely affect the person or persons involved.

(5) (Deleted by amendment, L. 96, p. 691, § 1, effective July 1, 1996.)

(6) The limitations imposed by subsections (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.

(7) The secretary or clerk of each state public body or local public body shall maintain a list of persons who, within the previous two years, have requested notification of all meetings or of meetings when certain specified policies will be discussed and shall provide reasonable advance notification of such meetings, provided, however, that unintentional failure to provide such advance notice will not nullify actions taken at an otherwise properly published meeting. The provisions of this subsection (7) shall not apply to the day-to-day oversight of property or supervision of employees by county commissioners, as provided in paragraph (f) of subsection (2) of this section.

(8) No resolution, rule, regulation, ordinance, or formal action of a state or local public body shall be valid unless taken or made at a meeting that meets the requirements of subsection (2) of this section.

(9) (a) Any person denied or threatened with denial of any of the rights that are conferred on the public by this part 4 has suffered an injury in fact and, therefore, has standing to challenge the violation of this part 4.

(b) 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.

HISTORY: Source: Initiated 72. L. 73: p. 1666, § 1.C.R.S. 1963: § 3-37-402.L. 77: (1) and (2)

amended and (3) added, pp. 1155, 1157, § § 1, 1, effective June 19.L. 85: (2.6) added, p. 644, § 6, effective June 19.L. 87: (1), (2.3)(a), (2.3)(b), and (2.5) amended and (2.3)(f) added, p. 926, § 1, effective March 27.L. 89: (2.3)(f) amended, p. 1004, § 4, effective October 1.L. 91: Entire section amended, p. 815, § 2, effective June 1; (3)(a)(VI) amended, p. 586, § 6, effective October 1.L. 92: (2)(f) added, p. 972, § 1, effective April 23.L. 96: (2)(d)(III) added, p. 1480, § 2, effective June 1; (1)(b), (1)(d), (2)(d), IP(3)(a), (3)(a)(II), (3)(a)(V), (3)(b), IP (4), (4)(c), (5), and (7) amended and (3.5) added, p. 691, § 1, effective July 1.L. 97: (3.5) amended, p. 320, § 1, effective April 14.L. 99: (4)(g) amended, p. 205, § 1, effective March 31.L. 2000: (1)(d) amended and (3)(a)(VII) added, pp. 414, 415, § § 4, 5, effective April 13.L. 2001: (3)(a)(III) amended, p. 150, § 5, effective March 27; (2)(d.5) added and IP(3)(a), (3)(b), IP(4), and (4)(f) amended, pp. 1069, 1072, § § 1, 2, effective August 8.L. 2002: (3)(a)(IV) and (4)(d) amended, p. 238, § 7, effective April 12; (2)(d.5)(I)(A) and (2)(d.5)(II)(A) amended, p. 643, § 3, effective May 24; (3)(a)(VIII) added, p. 85, § 1, effective August 7.L. 2006: (2)(d.5)(I)(A), (2)(d.5)(I)(B), (2)(d.5)(II)(A), and (2)(d.5)(II)(B) amended, p. 9, § 1, effective August 7.L. 2009: (2)(d.5)(I)(B) and (3)(a)(II) amended, (HB 09-1124), ch. 94, p. 359, § 1, effective August 5; (4)(g) amended, (SB 09-292), ch. 369, p. 1967, § 74, effective August 5.L. 2010: (3)(d) added, (SB 10-003), ch. 391, p. 1859, § 40, effective June 9.L. 2012: (2)(d)(IV) added, (HB 12-1169), ch. 64, p. 227, § 1, effective March 24.L. 2014: (2)(d.5)(II)(E) amended, (SB 14-182), ch. 393, p. 1986, § 2, effective June 6; (9) amended, (HB 14-1390), ch. 380, p. 1859, § 1, effective June 6.

Editor's note: (1) Subsection (2.3)(f) was amended by House Bill No. 1143, enacted by the General Assembly at its first regular session in 1989, as a conforming amendment necessitated by the authorization for the operation of the university of Colorado university hospital by a nonprofit-nonstock corporation. The Colorado Supreme Court subsequently declared House Bill No. 1143 unconstitutional in its entirety. See Colorado Association of Public Employees v. Board of Regents, 804 P.2d 138 (Colo. 1990). Senate Bill 91-225, enacted by the General Assembly at its first regular session in 1991, authorized the operation of university hospital by a newly created university of Colorado hospital authority. Since the previous act was declared unconstitutional in its entirety, the General Assembly elected to make a similar conforming amendment in Senate Bill 91-225. However, subsection (2.3)(f) was amended in Senate Bill 91-33, enacted by the General Assembly at its first regular session in 1991. The provisions of said subsection (2.3)(f) were moved to subsection (3)(a), and, therefore, said subsection was the version amended. For further explanation of the circumstances surrounding the enactment of Senate Bill 91-225, see the legislative declaration contained in section 1 of chapter 99, Session Laws of Colorado 1991.

(2) (a) Section 3 of chapter 393 (SB 14-182), Session Laws of Colorado 2014, provides that changes to this section by the act apply to meetings of boards of education that take place on or after June 6, 2014.

(b) Section 2 of chapter 380 (HB 14-1390), Session Laws of Colorado 2014, provides that changes to this section by the act apply to meetings held on or after June 6, 2014.

Cross references: For the legislative declaration contained in the 1996 act enacting subsection (2)(d)(III), see section 1 of chapter 271, Session Laws of Colorado 1996. For the legislative declaration contained in the 2002 act amending subsections (2)(d.5)(I)(A) and (2)(d.5)(II)(A), see section 1 of chapter 187, Session Laws of Colorado 2002. For the legislative declaration in the 2010 act adding subsection (3)(d), see section 1 of chapter 391, Session Laws of Colorado 2010.

ANNOTATION

Law reviews. For article, "Home Rule Municipalities and Colorado's Open Records and Meetings Laws", see 18 Colo. Law. 1125 (1989). For article, "Practicing Law Before Part-Time Citizen

Boards and Commissions", see 18 Colo. Law. 1133 (1989). For article, "E-mail, Open Meetings, and Public Records", see 25 Colo. Law. 99 (October 1996).

Constitutionality of section. The open meetings law does not conflict with § 12 of art. V, Colo. Const., which provides in pertinent part: "Each house shall have power to determine the rules of its proceedings . . .". Cole v. State, 673 P.2d 345 (Colo. 1983).

The open meetings law strikes the proper balance between the public's right of access to information and a legislator's right to freedom of speech. Cole v. State, 673 P.2d 345 (Colo. 1983).

Although § 14 of art. V, Colo. Const., expressly authorizes the general assembly to conduct certain business in secret, both the senate and the house of representatives have determined that the business of legislative caucuses is not such as ought to be kept secret. Therefore, the open meetings law does not conflict with § 14 of art. V, Colo. Const. Cole v. State, 673 P.2d 345 (Colo. 1983).

Section only applies to state agencies, authorities, and the general assembly. Bagby v. Sch. Dist. No. 1, 186 Colo. 428, 528 P.2d 1299 (1974).

This section, in contrast to the Florida statute from which it was modeled, only applies to any state agency or authority. James v. Bd. of Comm'rs, 200 Colo. 28, 611 P.2d 976 (1980).

A broad construction of this section is unwarranted because the general assembly was very specific in defining the entities whose meetings were to be open to the public. Free Speech Def. Comm. v. Thomas, 80 P.3d 935 (Colo. App. 2003).

Section fails to define scope of term "state agency or authority". James v. Bd. of Comm'rs, 200 Colo. 28, 611 P.2d 976 (1980).

A county retirement plan operates as an agency or instrumentality of the county when the plan has availed itself of public entity tax and health benefits, has used county purchasing accounts, facilities, and the county seal, is authorized to levy a retirement tax, and has a budget that is factored into the county budget. Such plan is thereby subject to the open meetings law and the open records law. Zubeck v. El Paso County Retirement Plan, 961 P.2d 597 (Colo. App. 1998).

"Formal action" includes review of hearing officer's decision resulting in order representing final agency action on a particular issue. The quasi-judicial nature of such review is immaterial. Lanes v. State Auditor's Office, 797 P.2d 764 (Colo. App. 1990).

Teacher hiring and firing decisions are formal decisions, and, therefore, a firing decision by a school board that is made during an executive session as described in § 22-32-108 is invalid. Barbour v. Hanover Sch. Dist. No. 28, 148 P.3d 268 (Colo. App. 2006), aff'd in part and rev'd in part on other grounds, 171 P.3d 223 (Colo. 2007).

Legislative caucus meetings are "meetings" of policy making bodies within the meaning of the Colorado open meetings law and are therefore subject to the open meetings law's requirement that "meetings" be "public meetings open to the public at all times". Cole v. State, 673 P.2d 345 (Colo. 1983).

A local public body is required to give public notice of any meeting attended or expected to be attended by a quorum of the public body when the meeting is part of the policy-making process. Bd. of County Comm'rs v. Costilla County Conservancy Dist., 88 P.3d 1188 (Colo. 2004).

A meeting is part of the policy-making process when the meeting is held for the purpose of discussing or undertaking a rule, regulation, ordinance, or formal action. If the record supports

the conclusion that the meeting is rationally connected to the policy-making responsibilities of the public body holding or attending the meeting, then the meeting is subject to the Open Meetings Law, and the public body holding or attending the meeting must provide notice. Bd. of County Comm'rs v. Costilla County Conservancy Dist., 88 P.3d 1188 (Colo. 2004).

Board of county commissioners was not required to give notice of a meeting arranged by others because nothing in the record establishes any connection between the meeting and the policy-making function of the board. Bd. of County Comm'rs v. Costilla County Conservancy Dist., 88 P.3d 1188 (Colo. 2004).

E-mails exchanged between a regulatory agency's chairperson, its commissioners, and a member of the governor's staff about draft language of, and the agency's position on, pending legislation did not constitute a meeting under the statute because the e-mails did not concern the agency's public business. "Public business" means a public body's policy-making functions, which consist of discussing or undertaking a rule, regulation, ordinance, or formal action of the public body itself. Providing input on pending legislation is not a policy-making function of a regulatory agency. Intermountain Rural v. Pub. Utils., 2012 COA 123, 298 P.3d 1027.

Mere legislative formation of agency or authority insufficient. The mere enactment of legislation which permits the formation of a commission, board, agency, or authority does not per se make that body a state agency or authority. James v. Bd. of Comm'rs, 200 Colo. 28, 611 P.2d 976 (1980).

Section does not apply to political subdivisions. Bagby v. Sch. Dist. No. 1, 186 Colo. 428, 528 P.2d 1299 (1974); James v. Bd. of Comm'rs, 42 Colo. App. 27, 595 P.2d 262 (1978), aff'd, 200 Colo. 28, 611 P.2d 976 (1980).

Local licensing authority of city was an arm of a political subdivision of the state rather than a state agency and thus was not subject to open meetings law with regard to license suspension revocation proceeding. Lasterka Corp. v. Buckingham, 739 P.2d 925 (Colo. App. 1987).

Nor to urban renewal authority. Rather than being a state agency or authority, an urban renewal authority is an arm or agency of the municipality which creates it, and, therefore, this section has no applicability to such an authority. James v. Bd. of Comm'rs, 42 Colo. App. 27, 595 P.2d 262 (1978), aff'd, 200 Colo. 28, 611 P.2d 976 (1980).

Nor to redistricting negotiations held in courthouse under judge's supervision. Combined Communications Corp. v. Finesilver, 672 F.2d 818 (10th Cir. 1982).

Nor to a district attorney's advisory board. A district attorney is not a political subdivision under this section and, therefore, his advisory board is not a local public body. A district attorney is also not a state agency or state authority pursuant to the definition of state public body under this section, therefore, his advisory board is not a state public body. Free Speech Def. Comm. v. Thomas, 80 P.3d 935 (Colo. App. 2003).

Prohibition against making final policy decisions or taking formal action in a closed meeting also prohibits "rubber-stamping" previously decided issues. Bagby v. Sch. Dist. No. 1, 186 Colo. 428, 528 P.2d 1299 (1974); Van Alstyne v. Housing Auth. of City of Pueblo, 985 P.2d 97 (Colo. App. 1999); Walsenburg Sand & Gravel Co. v. City Council of Walsenburg, 160 P.3d 297 (Colo. App. 2007).

Because the purpose of the open meetings law is to require open decision-making, not to permanently condemn a decision made in violation of the statute, a public body may "cure" a previous violation of the law by holding a subsequent complying meeting that is not a mere rubber stamping of an earlier decision. COHVCO v. Bd. of Parks & Outdoor Rec., 2012 COA 146, 292 P.3d 1132.

School boards not covered since they are political subdivisions. Bagby v. Sch. Dist. No. 1, 186 Colo. 428, 528 P.2d 1299 (1974).

Section establishes flexible standard of notice. In view of the numerous meetings to which the statutory requirement of full and timely notice is applicable, this section establishes a flexible standard aimed at providing fair notice to the public, so that whether the notice requirement has been satisfied in a given case will depend upon the particular type of meeting involved. Benson v. McCormick, 195 Colo. 381, 578 P.2d 651 (1978); Lewis v. Town of Nederland, 934 P.2d 848 (Colo. App. 1996); Town of Marble v. Darien, 181 P.3d 1148 (Colo. 2008).

Publication of notice of meeting of local public body in newspaper of general circulation in the county in which the meeting is to be held, six days prior to the meeting, satisfies notice requirements of section. Van Alstyne v. Housing Auth. of City of Pueblo, 985 P.2d 97 (Colo. App. 1999).

An emergency necessarily presents a situation in which public notice, and likewise, a public forum would be impracticable or impossible. Lewis v. Town of Nederland, 934 P.2d 848 (Colo. App. 1996).

Procedures contained in a municipal ordinance requiring ratification of action taken at an emergency meeting at either the next board meeting or a special meeting where public notice of the emergency has been given, represent reasonable satisfaction of the "public" conditions of the Open Meetings Law under emergency circumstances. Lewis v. Town of Nederland, 934 P.2d 848 (Colo. App. 1996).

Some overt action must be taken by the board to give notice to the public that a meeting is to be held. At the very minimum, full and timely notice to the public requires that notice of the meeting be posted within a reasonable time prior to the meeting in an area which is open to public view. Hyde v. Banking Bd., 38 Colo. App. 41, 552 P.2d 32 (1976).

The mailing of notice to the persons on the "sunshine list" does not constitute full and timely notice to the public. Hyde v. Banking Bd., 38 Colo. App. 41, 552 P.2d 32 (1976).

Though a copy of the notice mailed to persons on the "sunshine list" is available for public inspection upon request, such a procedure does not constitute sufficient notice to the public under this section. Hyde v. Banking Bd., 38 Colo. App. 41, 552 P.2d 32 (1976).

Full notice requirement satisfied. An ordinary member of the community would understand that notice of an advisory committee update would include consideration of, and possible formal action on, the advisory committee's recommendations. Town of Marble v. Darien, 181 P.3d 1148 (Colo. 2008).

Section does not require a public body to adjourn and re-notify when the action already falls under a topic listed on the notice. The particular notice contained the agenda information available at the time of the notice and, thus, satisfied the requirement that "specific agenda information" be included "where possible". Town of Marble v. Darien, 181 P.3d 1148 (Colo. 2008).

Compliance with subsection (3) is not substitute for compliance with subsection (2). Hyde v. Banking Bd., 38 Colo. App. 41, 552 P.2d 32 (1976).

Action taken without full and timely notice is invalid. This section does not invalidate the formal action of a board for the failure to comply with notice to those persons on the "sunshine list", but it does invalidate an action taken where there is not full and timely notice to the public. Hyde v. Banking Bd., 38 Colo. App. 41, 552 P.2d 32 (1976).

City council's use of anonymous ballot procedure to fill city council vacancies and to appoint

municipal judge is not prohibited by section. Section does not impose specific voting procedures on local public bodies let alone one that prohibits the use of anonymous ballots. Section is silent as to whether the votes taken need to be recorded in a way that identifies which elected official voted for which candidate. Rather, section only requires that the public have access to meetings of local public bodies and be able to observe the decision-making process. Henderson v. City of Fort Morgan, 277 P.3d 853 (Colo. App. 2011).

Subsection (4) invalidates any formal action regarding compensation taken other than at an open meeting, absent prior request by the person affected for an executive session. Lanes v. State Auditor's Office, 797 P.2d 764 (Colo. App. 1990).

District court erred in permitting the redaction of the minutes of a county retirement plan's meetings that were not conducted in an executive session because the plan did not follow the statutory requirements for calling an executive session and the meetings were not actually held in an executive session. Zubeck v. El Paso County Retirement Plan, 961 P.2d 597 (Colo. App. 1998).

If a local public body fails strictly to comply with the requirements set forth to convene an executive session, it may not avail itself of the protections afforded by the executive session exception. Therefore, if an executive session is not properly convened, it is an open meeting subject to the public disclosure requirements of the Open Meetings Law. Gumina v. City of Sterling, 119 P.3d 527 (Colo. App. 2004).

Subsection (9) is not a general grant of standing to any citizen and does not abrogate the requirement that in order to have standing the plaintiff must suffer an injury in fact. Pueblo Sch. Dist. No. 60 v. Colo. High Sch. Activities Assn., 30 P.3d 752 (Colo. App. 2000).

Subsection (9) entitles plaintiffs to an award of attorney fees upon a finding that the governmental entity has violated any of the provisions of law. There is no requirement that the violation be knowing or intentional. Zubeck v. El Paso County Retirement Plan, 961 P.2d 597 (Colo. App. 1998).

Subsection (9) establishes mandatory consequences for a violation of the Open Meetings Law, entitling plaintiffs to their costs and attorney fees incurred in bringing an action to force a public body to comply with the law. Van Alstyne v. Housing Auth. of City of Pueblo, 985 P.2d 97 (Colo. App. 1999).

Where a public body cured an admitted violation before the filing of a complaint, the plaintiff was not a prevailing party and is not entitled to an award of fees and costs. COHVCO v. Bd. of Parks & Outdoor Rec., 2012 COA 146, 292 P.3d 1132.