

**First Regular Session  
Seventy-fourth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 23-0927.01 Megan McCall x4215

**HOUSE BILL 23-1259**

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**HOUSE SPONSORSHIP**

**Daugherty and Evans,**

**SENATE SPONSORSHIP**

**(None),**

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**House Committees**

State, Civic, Military, & Veterans Affairs

**Senate Committees**

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**A BILL FOR AN ACT**

101       **CONCERNING PROVISIONS IN THE OPEN MEETINGS LAW FOR AN**  
102               **EXECUTIVE SESSION OF A LOCAL PUBLIC BODY, AND, IN**  
103               **CONNECTION THEREWITH, CREATING A LOCAL PUBLIC BODY'S**  
104               **RIGHT TO CURE A VIOLATION OF THE OPEN MEETINGS LAW FOR**  
105               **AN EXECUTIVE SESSION, ADDING PREREQUISITES FOR A PERSON**  
106               **TO CHALLENGE A VIOLATION BY A LOCAL PUBLIC BODY OF THE**  
107               **OPEN MEETINGS LAW FOR AN EXECUTIVE SESSION, AND**  
108               **PERMITTING A LOCAL PUBLIC BODY TO RECOVER COSTS AND**  
109               **ATTORNEY FEES IN AN ACTION FOR A VIOLATION BY A LOCAL**  
110               **PUBLIC BODY OF THE EXECUTIVE SESSION PROVISIONS IF THE**  
111               **PREREQUISITES ARE NOT MET OR IF THE LOCAL PUBLIC BODY**  
112               **HAS CURED THE VIOLATION.**

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Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters or bold & italic numbers indicate new material to be added to existing law.*  
*Dashes through the words or numbers indicate deletions from existing law.*

## 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>.)*

The bill creates a right for a local public body to cure a violation of the open meetings law with respect to an executive session if the local public body takes the corrective action at its next meeting after the meeting at which the violation occurred or at the local public body's next meeting that is held at least 14 days after receiving notice by a person who intends to challenge the violation. The bill requires that, in order to have standing, a person who intends to challenge a violation of the open meetings law by a local public body in connection with an executive session must first provide notice to the secretary or clerk of the local public body and the parties must meet or communicate before the next meeting of the local public body to determine if the challenge can be resolved without filing with the court. If the local public body cures the violation, a person does not have standing to challenge the violation.

Under current law, if the court finds a violation of the open meetings law, a prevailing citizen is entitled to costs and reasonable attorney fees. If the court does not find a violation, the prevailing party may recover costs and reasonable attorney fees if the court finds that the action was frivolous, vexatious, or groundless. The bill creates an additional allowance in connection with a challenge filed that concerns an action by a local public body for an executive session to allow a local public body to recover costs and reasonable attorney fees if the court determines the person filing the challenge has not complied with the notice requirements or that the local public body has cured the violation.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-6-402, **add** (4.5)

3 as follows:

4 **24-6-402. Meetings - open to public - legislative declaration -**

5 **definitions.** (4.5) (a) (I) A LOCAL PUBLIC BODY HAS THE RIGHT TO CURE

6 A VIOLATION OF SUBSECTION (4) OF THIS SECTION. AS USED IN THIS

7 SUBSECTION (4.5), "CURE" MEANS THE LOCAL PUBLIC BODY SATISFIES THE

1 REQUIREMENTS SET FORTH IN SUBSECTIONS (4.5)(a)(II) AND (4.5)(a)(III)  
2 OF THIS SECTION.

3 (II) A LOCAL PUBLIC BODY CURES A VIOLATION OF SUBSECTION (4)  
4 OF THIS SECTION BY REVISING ITS ANNOUNCEMENT OF THE TOPIC FOR  
5 DISCUSSION THAT WAS PREVIOUSLY IN VIOLATION OF SUBSECTION (4) OF  
6 THIS SECTION EITHER:

7 (A) AT THE NEXT MEETING OF THE LOCAL PUBLIC BODY AFTER THE  
8 MEETING AT WHICH THE VIOLATION OCCURRED; OR

9 (B) AT THE NEXT MEETING OF THE LOCAL PUBLIC BODY THAT IS  
10 HELD AT LEAST FOURTEEN DAYS AFTER RECEIPT OF THE NOTICE REQUIRED  
11 PURSUANT TO SUBSECTION (4.5)(b)(I) OF THIS SECTION.

12 (III) THE REVISED ANNOUNCEMENT AND VOTE TO HOLD THE  
13 EXECUTIVE SESSION MUST COMPLY WITH THE REQUIREMENTS OF THIS  
14 SECTION AND IDENTIFY THE PURPOSE OF THE EXECUTIVE SESSION AND  
15 PROVIDE ADEQUATE DETAIL REGARDING THE EXECUTIVE SESSION AS  
16 REQUIRED BY SUBSECTION (4) OF THIS SECTION.

17 (IV) AN EXECUTIVE SESSION THAT IS ENTERED INTO FOR A  
18 PURPOSE NOT AUTHORIZED BY SUBSECTION (4) OF THIS SECTION CANNOT  
19 BE CURED.

20 (b) (I) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (9)(a)  
21 OF THIS SECTION, A PERSON DOES NOT HAVE STANDING TO CHALLENGE A  
22 LOCAL PUBLIC BODY'S ACTION TAKEN PURSUANT TO SUBSECTION (4) OF  
23 THIS SECTION UNTIL THE PERSON FILES WRITTEN NOTICE WITH THE  
24 SECRETARY OR CLERK OF THE LOCAL PUBLIC BODY AT LEAST FOURTEEN  
25 DAYS BEFORE A REGULAR MEETING OF THE PUBLIC BODY. THE NOTICE  
26 MUST IDENTIFY THE ACTION FOR WHICH THE PERSON INTENDS TO FILE A  
27 CLAIM WITH A COURT OF RECORD CHALLENGING THE LOCAL PUBLIC BODY

1 FOR A VIOLATION OF SUBSECTION (4) OF THIS SECTION.

2 (II) AFTER RECEIPT OF THE NOTICE THAT IS REQUIRED PURSUANT  
3 SUBSECTION (4.5)(b)(I) OF THIS SECTION, AND BEFORE THE NEXT REGULAR  
4 MEETING OF THE LOCAL PUBLIC BODY, THE SECRETARY OR CLERK OF THE  
5 LOCAL PUBLIC BODY, OR A DESIGNATED REPRESENTATIVE OF THE LOCAL  
6 PUBLIC BODY, SHALL MEET IN PERSON OR OTHERWISE COMMUNICATE WITH  
7 THE PERSON WHO FILED THE NOTICE TO DETERMINE IF THE CHALLENGE  
8 CAN BE RESOLVED WITHOUT FILING THE CHALLENGE WITH A COURT  
9 PURSUANT TO SUBSECTION (9) OF THIS SECTION. DETERMINING IF THE  
10 PERSON'S CHALLENGE CAN BE RESOLVED INCLUDES WORKING TOGETHER  
11 TO DEVELOP A SOLUTION TO THE DEFICIENCY OF THE PRIOR  
12 ANNOUNCEMENT OF THE EXECUTIVE SESSION THAT IS ALLEGED TO BE IN  
13 VIOLATION OF SUBSECTION (4) OF THIS SECTION TO ADDRESS THE PERSON'S  
14 CHALLENGE AND COMPLY WITH THE REQUIREMENTS OF SUBSECTION (4) OF  
15 THIS SECTION.

16 (c) CURING AN ALLEGED VIOLATION OF SUBSECTION (4) OF THIS  
17 SECTION IS A BAR TO ANY ACTION AGAINST A LOCAL PUBLIC BODY  
18 CONCERNING THE SAME ALLEGED VIOLATION OF SUBSECTION (4) OF THIS  
19 SECTION. IF A PERSON FILES A CHALLENGE PURSUANT SUBSECTION (9) OF  
20 THIS SECTION AND THE LOCAL PUBLIC BODY RAISES THE ISSUE OF CURING  
21 THE ALLEGED VIOLATION BEFORE OR AFTER THE COMMENCEMENT OF  
22 DISCOVERY, THE COURT SHALL SUSPEND DISCOVERY UNLESS THE  
23 DISCOVERY IS NECESSARY TO DECIDE THE ISSUE OF CURING THE ALLEGED  
24 VIOLATION, AND THE COURT SHALL DECIDE SUCH ISSUE ON MOTION BY THE  
25 LOCAL PUBLIC BODY. THE COURT'S DECISION ON SUCH MOTION IS A FINAL  
26 JUDGMENT AND IS SUBJECT TO INTERLOCUTORY APPEAL.

27 (d) IF A CHALLENGE IS FILED PURSUANT TO SUBSECTION (9) OF THIS

1 SECTION CONCERNING AN ACTION TAKEN BY A LOCAL PUBLIC BODY  
2 PURSUANT TO ANY PROVISION OF SUBSECTION (4) OF THIS SECTION AND  
3 THE COURT DETERMINES THAT THE PERSON FAILED TO COMPLY WITH THE  
4 REQUIREMENTS OF SUBSECTION (4.5)(b) OF THIS SECTION OR THAT THE  
5 LOCAL PUBLIC BODY HAS CURED THE VIOLATION PURSUANT TO  
6 SUBSECTION (4.5)(a) OF THIS SECTION, THE COURT SHALL AWARD COSTS  
7 AND REASONABLE ATTORNEY FEES TO THE LOCAL PUBLIC BODY.

8           **SECTION 2. Applicability.** This act applies to challenges to a  
9 violation by a local public body of section 24-6-402 (4), C.R.S., brought  
10 on or after the effective date of this act.

11           **SECTION 3. Safety clause.** The general assembly hereby finds,  
12 determines, and declares that this act is necessary for the immediate  
13 preservation of the public peace, health, or safety.