

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 23-0927.01 Megan McCall x4215

HOUSE BILL 23-1259

HOUSE SPONSORSHIP

Daugherty and Evans, Bird, Hamrick, Kipp

SENATE SPONSORSHIP

Zenzinger and Simpson,

House Committees

State, Civic, Military, & Veterans Affairs

Senate Committees

State, Veterans, & Military Affairs

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, PROHIBITING AN AWARD OF COSTS OR
104 ATTORNEY FEES IN CERTAIN CIRCUMSTANCES IN AN ACTION
105 CHALLENGING A LOCAL PUBLIC BODY FOR A VIOLATION OF THE
106 OPEN MEETINGS LAW RELATED TO AN 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://leg.colorado.gov>.)

The bill creates a right for a local public body to cure a violation

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.

SENATE
Amended 2nd Reading
May 1, 2023

HOUSE
Amended 3rd Reading
April 14, 2023

HOUSE
Amended 2nd Reading
April 13, 2023

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.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-6-402, **amend**
3 (9)(b); and **add** ___ (9)(c) as follows:

4 **24-6-402. Meetings - open to public - legislative declaration -**
5 **definitions.** ___ (9) (b) The courts of record of this state shall
6 have jurisdiction to issue injunctions to enforce the purposes of this
7 section upon application by any citizen of this state. EXCEPT AS
8 OTHERWISE PROVIDED IN SUBSECTION (9)(c) OF THIS SECTION, in any
9 action in which the court finds a violation of this section, the court shall
10 award the citizen prevailing in such action costs and reasonable attorney
11 fees. In the event the court does not find a violation of this section, it shall
12 award costs and reasonable attorney fees to the prevailing party if the
13 court finds that the action was frivolous, vexatious, or groundless.

1 (c) A PRO SE PLAINTIFF IN AN ACTION CHALLENGING A LOCAL
2 PUBLIC BODY FOR A VIOLATION OF SUBSECTION (2)(d.5)(II) OR (4) OF THIS
3 SECTION OR FOR A VIOLATION OF SUBSECTION (2)(d)(II) OF THIS SECTION
4 ONLY AS IT RELATES TO AN EXECUTIVE SESSION HELD AT A MEETING, IS
5 NOT ENTITLED TO AN AWARD OF COSTS OR ATTORNEY FEES, NOR MAY
6 COSTS OR ATTORNEY FEES BE ASSESSED AGAINST A PRO SE PLAINTIFF
7 UNLESS OTHERWISE ALLOWED BY SUBSECTION (9)(b) OF THIS SECTION.

8 **SECTION 2. Applicability.** This act applies to actions
9 challenging a local public body for a violation of section 24-6-402
10 (2)(d.5)(II) or (4), C.R.S., or for a violation of section 24-6-402 (2)(d)(II),
11 C.R.S., only as it relates to an executive session held at a meeting brought
12 on or after the effective date of this act.

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