

1 **OPEN MEETINGS LAW AMENDMENTS**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Wayne A. Harper**

5 Senate Sponsor: Howard A. Stephenson

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the provisions of the Open and Public Meetings Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ provides certain definitions;
- 13 ▶ clarifies that a workshop or an executive session of a public body in which a
14 quorum is present is an open meeting unless closed in accordance with the act;
- 15 ▶ requires certain workshops or executive sessions to be held at the location where the
16 public body is holding the regularly scheduled public meeting and provides certain
17 exceptions;
- 18 ▶ requires that all closed meetings be recorded;
- 19 ▶ requires that the reason or reasons for holding the closed meeting and the location of
20 a closed meeting be publically announced and entered in the minutes of the open
21 meeting at which the closed meeting is approved;
- 22 ▶ requires that public bodies provide annual training on the requirements of the Open
23 and Public Meetings Act to the members of a public body;
- 24 ▶ requires that the attorney general's office provide public bodies with at least yearly
25 notice of any material changes to the requirements for the conduct of meetings
26 under the act;
- 27 ▶ provides penalties for violating closed meeting provisions; and
- 28 ▶ makes technical changes and grammatical corrections.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill coordinates with H.B. 16 by providing technical amendments.

33 This bill coordinates with S.B. 9 by providing superseding and technical amendments.

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **52-4-2**, as last amended by Chapter 89, Laws of Utah 1994

37 **52-4-3**, as enacted by Chapter 180, Laws of Utah 1977

38 **52-4-4**, as enacted by Chapter 180, Laws of Utah 1977

39 **52-4-7**, as last amended by Chapter 311, Laws of Utah 2002

40 **52-4-7.5**, as enacted by Chapter 89, Laws of Utah 1994

41 **52-4-9**, as enacted by Chapter 180, Laws of Utah 1977

42 **52-4-10**, as enacted by Chapter 89, Laws of Utah 1994

43 ENACTS:

44 **52-4-11**, Utah Code Annotated 1953

45 **52-4-12**, Utah Code Annotated 1953



47 *Be it enacted by the Legislature of the state of Utah:*

48 Section 1. Section **52-4-2** is amended to read:

49 **52-4-2. Definitions.**

50 As used in this chapter:

51 (1) "Convening" means the calling of a meeting of a public body by a person
52 authorized to do so for the express purpose of discussing or acting upon a subject over which
53 that public body has jurisdiction.

54 (2) (a) "Meeting" means the convening of a public body, with a quorum present,
55 including a workshop or an executive session whether the meeting is held in person or by
56 means of electronic equipment, for the purpose of discussing or acting upon a matter over
57 which the public body has jurisdiction or advisory power.

58 (b) "Meeting" does not mean:
59 (i) a chance meeting; or
60 (ii) the convening of a public body that has both legislative and executive
61 responsibilities where no public funds are appropriated for expenditure during the time the
62 public body is convened and:

63 (A) the public body is convened solely for the discussion or implementation of
64 administrative or operational matters for which no formal action by the public body is required;
65 or

66 (B) the public body is convened solely for the discussion or implementation of
67 administrative or operational matters that would not come before the public body for
68 discussion or action.

69 (3) (a) "Public body" means any administrative, advisory, executive, or legislative body
70 of the state or its political subdivisions that:

71 (i) is created by a statute, rule, ordinance, or resolution;
72 ~~[(i)]~~ (ii) consists of two or more persons;
73 ~~[(ii)]~~ (iii) expends, disburses, or is supported in whole or in part by tax revenue; and
74 ~~[(iii)]~~ (iv) is vested with the authority to make decisions regarding the public's
75 business.

76 (b) "Public body" does not include any:
77 (i) political party, group, or caucus; ~~[nor]~~ or
78 (ii) any conference committee, rules committee, or sifting committee of the
79 Legislature.

80 (4) (a) "Quorum" means a simple majority of the membership of a public body, unless
81 otherwise defined by applicable law.

82 (b) "Quorum" does not include a meeting of two elected officials by themselves when
83 no action, either formal or informal, is taken on a subject over which these elected officials
84 have jurisdiction.

85 (5) "Recording" means an audio or an audio and video record of the proceedings of a

86 meeting that can be used to review the proceedings of the meeting.

87 Section 2. Section **52-4-3** is amended to read:

88 **52-4-3. Meetings open to the public -- Exceptions.**

89 ~~[Every]~~ (1) (a) A meeting is open to the public unless closed pursuant to Sections
90 52-4-4 and 52-4-5.

91 (2) (a) A meeting that is open to the public includes a workshop or an executive
92 session of a public body in which a quorum is present, unless closed in accordance with this
93 chapter.

94 (b) A workshop or an executive session of a public body in which a quorum is present
95 that is held on the same day as a regularly scheduled public meeting of the public body may
96 only be held at the location where the public body is holding the regularly scheduled public
97 meeting unless:

98 (i) the workshop or executive session is held at the location where the public body
99 holds its regularly scheduled public meetings but, for that day, the regularly scheduled public
100 meeting is being held at different location;

101 (ii) any of the meetings held on the same day is a site visit or a traveling tour and, in
102 accordance with this chapter, public notice is given;

103 (iii) the workshop or executive session is an electronic meeting conducted according to
104 the requirements of Section 52-4-7.8; or

105 (iv) it is not practicable to conduct the workshop or executive session at the regular
106 location of the public body's open meetings due to an emergency or extraordinary
107 circumstances.

108 Section 3. Section **52-4-4** is amended to read:

109 **52-4-4. Closed meeting held upon vote of members -- Business -- Reasons for**
110 **meeting recorded.**

111 (1) A closed meeting may be held ~~[upon the affirmative vote of]~~:

112 (a) if a quorum is present; and

113 (b) if two-thirds of the members of the public body present at an open meeting for

114 which notice is given [~~pursuant to~~] under Section 52-4-6[~~;~~ ~~provided, a quorum is present. No~~
115 ~~vote to approve closing the meeting.~~

116 (2) ~~A~~ closed meeting is not allowed [~~except as to matters exempted~~] unless each matter
117 discussed in the closed meeting is permitted under Section 52-4-5[~~;~~ ~~provided, no~~].

118 (3) An ordinance, resolution, rule, regulation, contract, or appointment [~~shall~~] may not
119 be approved at a closed meeting. [~~The~~]

120 (4) The following information shall be publically announced and entered on the
121 minutes of the open meeting at which the closed meeting was approved:

122 (a) the reason or reasons for holding [~~a~~] the closed meeting [~~and~~];

123 (b) the location where the closed meeting will be held; and

124 (c) the vote of each member of the public body, either for or against the [~~proposition~~]
125 motion to hold [~~such a~~] the closed meeting[~~, cast by each member by name shall be entered on~~
126 ~~the minutes of the meeting~~].

127 (5) Nothing in this chapter shall be construed to require any meeting to be closed to the
128 public.

129 Section 4. Section **52-4-7** is amended to read:

130 **52-4-7. Records of meetings.**

131 (1) Written minutes or a [~~digital or tape~~] recording shall be kept of all open meetings.

132 Such minutes or a digital or tape recording shall include:

133 (a) the date, time, and place of the meeting;

134 (b) the names of members present and absent;

135 (c) the substance of all matters proposed, discussed, or decided, and a record, by
136 individual member, of votes taken;

137 (d) the names of all citizens who appeared and the substance in brief of their testimony;

138 and

139 (e) any other information that any member requests be entered in the minutes.

140 [~~(2) Except as provided in Section 52-4-7.5, written minutes or a digital or tape~~
141 ~~recording shall be kept of all closed meetings. Such minutes or digital or tape recording shall~~

142 include:]

143 [~~(a) the date, time, and place of the meeting;~~]

144 [~~(b) the names of members present and absent; and~~]

145 [~~(c) the names of all others present except where such disclosure would infringe on the~~
146 ~~confidence necessary to fulfill the original purpose of closing the meeting.]~~

147 (2) A recording of an open meeting shall be a complete and unedited record of all open
148 portions of the meeting from the commencement of the meeting through adjournment of the
149 meeting.

150 (3) The minutes and recordings are public records and shall be available within a
151 reasonable time after the meeting. A meeting record kept only by a digital or tape recording
152 must be converted to written minutes within a reasonable time upon request.

153 (4) All or any part of an open meeting may be recorded by any person in attendance;
154 provided, the recording does not interfere with the conduct of the meeting.

155 (5) Minutes of meetings that are required to be retained permanently shall be
156 maintained in or converted to a format that meets long-term records storage requirements.

157 (6) Written minutes or [~~digital or tape~~] recordings shall be public records pursuant to
158 Title 63, Chapter 2, Government Records Access and Management Act, but only written
159 minutes shall be evidence of the official action taken at such meeting.

160 Section 5. Section **52-4-7.5** is amended to read:

161 **52-4-7.5. Record of closed meetings.**

162 (1) If a public body closes a meeting to discuss the character, professional competence,
163 or physical or mental health of an individual under Subsection 52-4-5(1)(a)(i) or to discuss the
164 deployment of security personnel, devices, or systems under Subsection 52-4-5(1)(a)(vi), the
165 person presiding shall sign a sworn statement affirming that the sole purpose for closing the
166 meeting was to discuss:

167 (a) the character, professional competence, or physical or mental health of an
168 individual; or

169 (b) the deployment of security personnel, devices, or systems.

170 (2) (a) If a public body closes a meeting under Subsection 52-4-5(1) for any purpose
171 other than to discuss the character, professional competence, or physical or mental health of an
172 individual or to discuss the deployment of security personnel, devices, or systems, the public
173 body shall ~~[either tape]~~ record the closed portion of the meeting ~~[or]~~ and may keep detailed
174 written minutes that disclose the content of the closed portion of the meeting.

175 (b) A recording of a closed meeting shall be complete and unedited from the
176 commencement of the closed meeting through adjournment of the closed meeting.

177 (c) The recording and any minutes of a closed meeting shall include:

178 (i) the date, time, and place of the meeting;

179 (ii) the names of members present and absent; and

180 (iii) the names of all others present except where the disclosure would infringe on the
181 confidentiality necessary to fulfill the original purpose of closing the meeting.

182 ~~[(b)]~~ (d) (i) ~~[Tape recordings]~~ Both a recording and written minutes of closed meetings
183 are protected records under Title 63, Chapter 2, Government Records Access and Management
184 Act, and any person who violates the provisions of Section 63-2-801 is subject to the criminal
185 penalties contained in that section.

186 (ii) Notwithstanding the provisions of Subsection 63-2-202(4)(c), ~~[tape]~~ recordings and
187 written minutes of closed meetings, as protected records, may be disclosed pursuant to a court
188 order only as provided in Section 52-4-10.

189 Section 6. Section **52-4-9** is amended to read:

190 **52-4-9. Enforcement of chapter -- Notice of changes provided by attorney general**
191 **-- Suit to compel compliance.**

192 (1) The attorney general and county attorneys of the state shall enforce this chapter.

193 (2) The attorney general shall, on at least a yearly basis, provide notice to all public
194 bodies that are subject to this chapter of any material changes to the requirements for the
195 conduct of meetings under this chapter.

196 ~~[(2)]~~ (3) A person denied any right under this chapter may commence suit in a court of
197 competent jurisdiction to compel compliance with or enjoin violations of this chapter or to

198 determine its applicability to discussions or decisions of a public body. The court may award
199 reasonable attorney fees and court costs to a successful plaintiff.

200 Section 7. Section **52-4-10** is amended to read:

201 **52-4-10. Action challenging closed meeting.**

202 (1) Notwithstanding the procedure established [~~in~~] under Subsection 63-2-202(7), in
203 any action brought under the authority of this chapter to challenge the legality of a closed
204 meeting held by a public body, the court shall:

205 (a) review the [~~tape~~] recording or written minutes of the closed meeting in camera; and

206 (b) decide the legality of the closed meeting.

207 (2) (a) If the judge determines that the public body did not violate the law governing
208 closed meetings, the judge shall dismiss the case without disclosing or revealing any
209 information from the [~~tape~~] recording or minutes of the closed meeting.

210 (b) If the judge determines that the public body violated the law governing closed
211 meetings, the judge shall publicly disclose or reveal from the [~~tape recordings~~] recording or
212 minutes of the closed meeting all information about the portion of the meeting that was
213 illegally closed.

214 Section 8. Section **52-4-11** is enacted to read:

215 **52-4-11. Training.**

216 The presiding officer of the public body shall ensure that the members of the public
217 body are provided with annual training on the requirements of this chapter.

218 Section 9. Section **52-4-12** is enacted to read:

219 **52-4-12. Criminal penalty for closed meeting violation.**

220 In addition to any other penalty under this chapter, a member of a public body who
221 knowingly or intentionally violates or who knowingly or intentionally abets or advises a
222 violation of any of the closed meeting provisions of this chapter is guilty of a class B
223 misdemeanor.

224 Section 10. **Coordinating H.B. 14 with H.B. 16 -- Technical amendments.**

225 If this H.B. 14 and H.B. 16, Revisions to Open and Public Meetings Law, both pass, it

226 is the intent of the Legislature that the Office of Legislative Research and General Counsel, in
227 preparing the Utah Code database for publication, shall delete Subsection 52-4-7(7) and
228 renumber the remaining subsections accordingly.

229 Section 11. **Coordinating H.B. 14 with S.B. 9 -- Superseding and technical**
230 **amendments.**

231 If this H.B. 14 and S.B. 9, Open and Public Meetings Act Revisions, both pass, it is the
232 intent of the Legislature that the Office of Legislative Research and General Counsel shall
233 prepare the Utah Code database for publication as follows:

234 (1) the reference in Subsection 52-4-3(2)(b)(i) to "Section 52-4-7.8" shall be changed
235 to "Section 52-4-207";

236 (2) Subsections 52-4-206(1), (2), and (3) shall be amended to read as follows:

237 "(1) Except as provided under Subsection (5), if a public body closes a meeting under
238 Subsection 52-4-205(1), the public body:

239 (a) shall make a recording of the closed portion of the meeting; and

240 (b) may keep detailed written minutes that disclose the content of the closed portion of
241 the meeting.

242 (2) A recording of a closed meeting shall be complete and unedited from the
243 commencement of the closed meeting through adjournment of the closed meeting.

244 (3) The recording and any minutes of a closed meeting shall include:"; and

245 (3) renumber remaining subsections accordingly.