

Senator Howard A. Stephenson proposes the following substitute bill:

OPEN MEETINGS LAW AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ provides certain definitions;
- ▶ clarifies that a workshop or an executive session of a public body in which a quorum is present is an open meeting unless closed in accordance with the act;
- ▶ requires certain workshops or executive sessions to be held at the location where the public body regularly conducts its open meetings and provides certain exceptions;
- ▶ requires that all closed meetings be recorded;
- ▶ requires that the reason or reasons for holding the closed meeting and the location of a closed meeting be publically announced and entered in the minutes of the open meeting at which the closed meeting is approved;
- ▶ requires that public bodies provide training on the requirements of the Open and Public Meetings Act to the members of a public body whenever a new member is elected or appointed;
- ▶ requires that the attorney general's office provide public bodies with at least yearly 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 None

33 **Utah Code Sections Affected:**

34 **AMENDS:**

35 **52-4-2**, as last amended by Chapter 89, Laws of Utah 1994

36 **52-4-3**, as enacted by Chapter 180, Laws of Utah 1977

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

38 **52-4-7**, as last amended by Chapter 311, Laws of Utah 2002

39 **52-4-7.5**, as enacted by Chapter 89, Laws of Utah 1994

40 **52-4-9**, as enacted by Chapter 180, Laws of Utah 1977

41 **52-4-10**, as enacted by Chapter 89, Laws of Utah 1994

42 **ENACTS:**

43 **52-4-11**, Utah Code Annotated 1953

44 **52-4-12**, Utah Code Annotated 1953



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

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

48 **52-4-2. Definitions.**

49 As used in this chapter:

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

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

57 (b) "Meeting" does not mean:

58 (i) a chance meeting; or

59 (ii) the convening of a public body that has both legislative and executive

60 responsibilities where no public funds are appropriated for expenditure during the time the

61 public body is convened and:

62 (A) the public body is convened solely for the discussion or implementation of

63 administrative or operational matters for which no formal action by the public body is required;

64 or

65 (B) the public body is convened solely for the discussion or implementation of

66 administrative or operational matters that would not come before the public body for

67 discussion or action.

68 (3) (a) "Public body" means any administrative, advisory, executive, or legislative body

69 of the state or its political subdivisions that:

70 (i) is created by a statute, rule, ordinance, or resolution;

71 [~~(i)~~] (ii) consists of two or more persons;

72 [~~(ii)~~] (iii) expends, disburses, or is supported in whole or in part by tax revenue; and

73 [~~(iii)~~] (iv) is vested with the authority to make decisions regarding the public's

74 business.

75 (b) "Public body" does not include any:

76 (i) political party, group, or caucus; [~~nor~~]

77 (ii) any conference committee, rules committee, or sifting committee of the

78 Legislature[-]; or

79 (iii) a subcommittee of a public body if less than a quorum of the public body is

80 present.

81 (4) (a) "Quorum" means a simple majority of the membership of a public body, unless

82 otherwise defined by applicable law.

83 (b) "Quorum" does not include a meeting of two elected officials by themselves when

84 no action, either formal or informal, is taken on a subject over which these elected officials

85 have jurisdiction.

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

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

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

89 **52-4-3. Meetings open to the public -- Exceptions.**

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

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

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

98 (i) the workshop or executive session is an electronic meeting conducted according to
99 the requirements of Section 52-4-7.8; or

100 (ii) it is not practicable to conduct the workshop or executive session at the regular
101 location of the public body's open meetings due to an emergency or extraordinary
102 circumstances.

103 Section 3. Section 52-4-4 is amended to read:

104 **52-4-4. Closed meeting held upon vote of members -- Business -- Reasons for**
105 **meeting recorded.**

106 (1) A closed meeting may be held:

107 (a) upon the affirmative vote of two-thirds of the members of the public body present
108 at an open meeting for which notice is given ~~[pursuant to]~~ under Section 52-4-6; ~~[provided,]~~
109 and

110 (b) if a quorum is present. ~~[No]~~

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

113 (3) No ordinance, resolution, rule, regulation, contract, or appointment shall be
114 approved at a closed meeting. ~~[The]~~

115 (4) The following information shall be publically announced and entered in the minutes
116 of the open meeting at which the closed meeting was approved:

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

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

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

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

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

125 **52-4-7. Records of meetings.**

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

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

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

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

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

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

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

135 [~~(2) Except as provided in Section 52-4-7.5, written minutes or a digital or tape~~
136 ~~recording shall be kept of all closed meetings. Such minutes or digital or tape recording shall~~
137 ~~include:]~~

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

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

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

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

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

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

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

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

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

156 **52-4-7.5. Record of closed meetings.**

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

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

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

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

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

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

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

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

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

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

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

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

185 **52-4-9. Enforcement of chapter -- Notice of changes provided by attorney general**
186 **-- Suit to compel compliance.**

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

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

191 [~~(2)~~] (3) A person denied any right under this chapter may commence suit in a court of
192 competent jurisdiction to compel compliance with or enjoin violations of this chapter or to
193 determine its applicability to discussions or decisions of a public body. The court may award
194 reasonable attorney fees and court costs to a successful plaintiff.

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

196 **52-4-10. Action challenging closed meeting.**

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

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

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

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

205 (b) If the judge determines that the public body violated the [~~law~~] provisions of this
206 chapter governing closed meetings, the judge shall publicly disclose or reveal from the [~~tape~~
207 ~~recordings~~] recording or minutes of the closed meeting all information about the portion of the
208 meeting that was illegally closed.

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

210 **52-4-11. Training.**

211 Within 60 days of the election or appointment of a new member to a public body,

212 including school boards, that is subject to the requirements of this chapter, the presiding officer
213 of the public body shall ensure that the members of the public body are provided with training
214 on the requirements of this chapter.

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

216 **52-4-12. Criminal penalty for closed meeting violation.**

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