

**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: \_\_\_\_\_

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**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 is holding the regularly scheduled public meeting 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



26 notice of any material changes to the requirements for the conduct of meetings 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 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]~~

78 (ii) any conference committee, rules committee, or sifting committee of the  
79 Legislature~~[-]; or~~

80 (iii) a subcommittee of a public body if less than a quorum of the public body is  
81 present.

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

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

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

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

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

90 **52-4-3. Meetings open to the public -- Exceptions.**

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

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

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

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

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

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

106 **52-4-4. Closed meeting held upon vote of members -- Business -- Reasons for**  
107 **meeting recorded.**

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

109 (a) if a quorum is present; and

110 (b) if two-thirds of the members of the public body present at an open meeting for  
111 which notice is given ~~[pursuant to]~~ under Section 52-4-6~~[- provided, a quorum is present. No].~~

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

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

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

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

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

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

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

125 Section 4. Section 52-4-7 is amended to read:

126 **52-4-7. Records of meetings.**

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

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

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

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

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

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

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

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

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

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

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

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

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

149 (4) All or any part of an open meeting may be recorded by any person in attendance;

150 provided, the recording does not interfere with the conduct of the meeting.

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

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

156 Section 5. Section ~~52-4-7.5~~ is amended to read:

157 **52-4-7.5. Record of closed meetings.**

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

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

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

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

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

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

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

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

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

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

181 penalties contained in that section.

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

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

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

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

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

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

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

197 **52-4-10. Action challenging closed meeting.**

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

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

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

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

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

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

211 **52-4-11. Training.**

212 Within 60 days of the election or appointment of a new member to a public body,  
213 including school boards, that is subject to the requirements of this chapter, the presiding officer  
214 of the public body shall ensure that the members of the public body are provided with training  
215 on the requirements of this chapter.

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

217 **52-4-12. Criminal penalty for closed meeting violation.**

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

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

223 If this H.B. 14 and H.B. 16, Revisions to Open and Public Meetings Law, both pass, it  
224 is the intent of the Legislature that the Office of Legislative Research and General Counsel, in  
225 preparing the Utah Code database for publication, shall delete Subsection 52-4-7(7) and  
226 renumber the remaining subsections accordingly.

227 Section 11. **Coordinating H.B. 14 with S.B. 9 -- Technical amendments.**

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

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

233 (2) Subsection 52-4-206(2) shall be amended to read as follows, "(2) The recording  
234 and any minutes of a closed meeting shall include:".



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**Fiscal Note**  
**Bill Number HB0014S02**

**Open Meetings Law Amendments**

*08-Feb-06*

*9:32 AM*

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**State Impact**

Provisions of this bill can be implemented with existing resources.

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**Individual and Business Impact**

Provisions of this bill can be implemented with existing resources.

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**Office of the Legislative Fiscal Analyst**