

**Second Regular Session  
Sixty-fifth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

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

LLS NO. 06-0473.01 Dan Cartin

**SENATE BILL 06-009**

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**SENATE SPONSORSHIP**

**Mitchell**, and Grossman

**HOUSE SPONSORSHIP**

**McGihon**, Carroll T., and Witwer

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**Senate Committees**  
State, Veterans & Military Affairs

**House Committees**

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**A BILL FOR AN ACT**

101     **CONCERNING A REQUIREMENT THAT DISCUSSIONS OCCURRING IN**  
102             **EXECUTIVE SESSIONS OF PUBLIC BODIES BE ELECTRONICALLY**  
103             **RECORDED.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Requires that discussions occurring in an executive session of a state public body or a local public body be electronically recorded, rather than recorded in some other method used by the public body to record the minutes of an open meeting, such as written minutes. Deletes attestation requirements regarding the veracity of written minutes of an executive session.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

Specifies that no record or electronic recording of a discussion involving a privileged attorney-client communication is required in an executive session that has been properly announced by the state public body or local public body. Clarifies that the electronic recording of an executive session shall reflect the opinion of the attorney representing the public body that no record or electronic recording was kept of such a discussion based on the attorney's opinion that the discussion constituted a privileged attorney-client communication.

Makes conforming amendments.

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

2 **SECTION 1.** 24-6-402 (2) (d.5) (I) (A), (2) (d.5) (I) (B), (2) (d.5)  
3 (II) (A), and (2) (d.5) (II) (B), Colorado Revised Statutes, are amended to  
4 read:

5 **24-6-402. Meetings - open to public - definitions.**

6 (2) (d.5) (I) (A) Discussions that occur in an executive session of a state  
7 public body shall be ELECTRONICALLY recorded. ~~in the same manner and~~  
8 ~~media that the state public body uses to record the minutes of open~~  
9 ~~meetings.~~ If a state public body electronically recorded the minutes of its  
10 open meetings on or after August 8, 2001, the state public body shall  
11 continue to electronically record the minutes of its open meetings that  
12 occur on or after August 8, 2001; except that electronic recording shall  
13 not be required for two successive meetings of the state public body while  
14 the regularly used electronic equipment is inoperable. A state public body  
15 may satisfy the ELECTRONIC recording requirements of this  
16 sub-subparagraph (A) by making any form of electronic recording of the  
17 discussions in an executive session of the state public body. Except as  
18 provided in sub-subparagraph (B) of this subparagraph (I), the ~~record~~  
19 ELECTRONIC RECORDING of an executive session shall reflect the specific  
20 citation to the provision in subsection (3) of this section that authorizes

1 the state public body to meet in an executive session AND the actual  
2 contents of the discussion during the session. ~~and a signed statement from~~  
3 ~~the chair of the executive session attesting that any written minutes~~  
4 ~~substantially reflect the substance of the discussions during the executive~~  
5 ~~session. For purposes of this sub-subparagraph (A), "actual contents of~~  
6 ~~the discussion" shall not be construed to require the minutes of an~~  
7 ~~executive session to contain a verbatim transcript of the discussion during~~  
8 ~~said executive session.~~ The provisions of this sub-subparagraph (A) shall  
9 not apply to discussions of individual students by a state public body  
10 pursuant to paragraph (b) of subsection (3) of this section.

11 (B) If, in the opinion of the attorney who is representing the state  
12 public body and is in attendance at ~~the~~ AN executive session THAT HAS  
13 BEEN PROPERLY ANNOUNCED PURSUANT TO PARAGRAPH (a) OF  
14 SUBSECTION (3) OF THIS SECTION, all or a portion of the discussion during  
15 the executive session constitutes a privileged attorney-client  
16 communication, no record OR ELECTRONIC RECORDING shall be required  
17 to be kept of the part of the discussion that constitutes a privileged  
18 attorney-client communication. ~~Any~~ THE electronic ~~record~~ RECORDING  
19 of said executive session discussion shall reflect that no further record OR  
20 ELECTRONIC RECORDING was kept of the discussion based on the opinion  
21 of the attorney representing the state public body, as stated for the record  
22 during the executive session, that the discussion ~~constitutes~~ CONSTITUTED  
23 a privileged attorney-client communication, Any written minutes shall  
24 contain a signed statement from OR the attorney representing the state  
25 public body MAY PROVIDE A SIGNED STATEMENT attesting that the portion  
26 of the executive session that was not recorded constituted a privileged  
27 attorney-client communication in the opinion of the attorney. and a signed

1 ~~statement from the chair of the~~ executive session attesting that the portion  
2 of the executive session that was not recorded was confined to the topic  
3 authorized for discussion in an executive session pursuant to subsection  
4 (3) of this section.

5 (II) (A) Discussions that occur in an executive session of a local  
6 public body shall be ELECTRONICALLY recorded. ~~in the same manner and~~  
7 ~~media that the local public body uses to record the minutes of open~~  
8 ~~meetings.~~ If a local public body electronically recorded the minutes of its  
9 open meetings on or after August 8, 2001, the local public body shall  
10 continue to electronically record the minutes of its open meetings that  
11 occur on or after August 8, 2001; except that electronic recording shall  
12 not be required for two successive meetings of the local public body  
13 while the regularly used electronic equipment is inoperable. A local  
14 public body may satisfy the ELECTRONIC recording requirements of this  
15 sub-subparagraph (A) by making any form of electronic recording of the  
16 discussions in an executive session of the local public body. Except as  
17 provided in sub-subparagraph (B) of this subparagraph (II), the ~~record~~  
18 ELECTRONIC RECORDING of an executive session shall reflect the specific  
19 citation to the provision in subsection (4) of this section that authorizes  
20 the local public body to meet in an executive session AND the actual  
21 contents of the discussion during the session. ~~and a signed statement from~~  
22 ~~the chair of the executive session attesting that any written minutes~~  
23 ~~substantially reflect the substance of the discussions during the executive~~  
24 ~~session.~~ For purposes of this sub-subparagraph (A), "actual contents of  
25 the discussion" shall not be construed to require the minutes of an  
26 executive session to contain a verbatim transcript of the discussion during  
27 said executive session. The provisions of this sub-subparagraph (A) shall

1 not apply to discussions of individual students by a local public body  
2 pursuant to paragraph (h) of subsection (4) of this section.

3 (B) If, in the opinion of the attorney who is representing the local  
4 public body and who is in attendance at ~~the~~ AN executive session THAT  
5 HAS BEEN PROPERLY ANNOUNCED PURSUANT TO SUBSECTION (4) OF THIS  
6 SECTION, all or a portion of the discussion during the executive session  
7 constitutes a privileged attorney-client communication, no record OR  
8 ELECTRONIC RECORDING shall be required to be kept of the part of the  
9 discussion that constitutes a privileged attorney-client communication.  
10 ~~Any~~ THE electronic ~~record~~ RECORDING of said executive session  
11 discussion shall reflect that no further record OR ELECTRONIC RECORDING  
12 was kept of the discussion based on the opinion of the attorney  
13 representing the local public body, as stated for the record during the  
14 executive session, that the discussion ~~constitutes~~ CONSTITUTED a  
15 privileged attorney-client communication, Any written minutes shall  
16 contain a signed statement from OR the attorney representing the local  
17 public body MAY PROVIDE A SIGNED STATEMENT attesting that the portion  
18 of the executive session that was not recorded constituted a privileged  
19 attorney-client communication in the opinion of the attorney, and a signed  
20 statement from the chair of the executive session attesting that the portion  
21 of the executive session that was not recorded was confined to the topic  
22 authorized for discussion in an executive session pursuant to subsection  
23 (4) of this section.

24 **SECTION 2. Effective date - applicability.** (1) This act shall  
25 take effect at 12:01 a.m. on the day following the expiration of the  
26 ninety-day period after final adjournment of the general assembly that is  
27 allowed for submitting a referendum petition pursuant to article V,

1 section 1 (3) of the state constitution (August 9, 2006, if adjournment sine  
2 die is on May 10, 2006); except that, if a referendum petition is filed  
3 against this act or an item, section, or part of this act within such period,  
4 then the act, item, section, or part, if approved by the people, shall take  
5 effect on the date of the official declaration of the vote thereon by  
6 proclamation of the governor.

7 (2) The provisions of this act shall apply to discussions occurring  
8 in an executive session of a state public body or local public body on or  
9 after the effective date of this act.