



CORA AND OPEN MEETINGS LAW

Southwest Chief and Front Range Passenger Rail Commission

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Southwest Chief and Front Range Passenger Rail



Section 43-4-1001, C.R.S. – Membership/Powers

Section 43-4-1002, C.R.S. – Fund



Rail Commission



Section 43-4-1001(2), C.R.S. – Commission Created

- Created within CDOT
- Type 1 Transfer
- Eleven Commissioners
- Two Advisors
- Mission of Commission



Colorado Open Records Act (CORA)



It is declared to be the public policy of this state that all public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise specifically provided by law.

- ◆ Section 24-72-201, C.R.S.



The purpose of the open records statutes is to assure that the workings of government are not unduly shielded from the public eye.

- ◆ *Int'l Brotherhood of Electrical Workers v. Denver Metropolitan Major League Baseball Stadium District*, 880 P.2d 160, 165 (Colo. App. 1994)



CORA – In a Nutshell



All public records **shall** be open for inspection by any person at reasonable times, except as provided in part 2 or as otherwise provided by law.

- ◆ Section 24-72-203, C.R.S.



Key Concept – “Public Record”

- “...includes all writings...
- ...made, maintained, or kept...
- ...by the state, any agency, institution, a nonprofit corporation incorporated pursuant to section 23-5-121(2), C.R.S., or political subdivision of the state...”
- Section 24-72-202(6)(A)(I), C.R.S.

Is My Record a “Public Record”?

- What is a public record? Definition is very broad and includes:
 - ◆ Internal and external communications, such as might take place among agency staff, between staff and a board, between board members, between staff, between members of one agency and another agency, and between members of the public/3rd parties.
 - ◆ No limitation on means of communication. A “public record” includes both hard-paper documents and electronic records/documents.

Record, but Not a “Public Record”

- CORA exempts numerous documents from the definition of “public records.” Those are found in section 24-72-202(6), C.R.S.

“Public Records Does Not Include...”

- Criminal justice records as defined in CORA.
- Work product prepared for elected officials – defined in Section 202(6.5).
- Certain data related to CollegenInvest.
- Certain materials related to crime victim compensation boards or district attorneys.
- Certain notifications related to arson or insurance fraud.

Public Records Also Does Not Include...

- Certain documents related to financial expenditure records (institutionally related foundations).
- Certain donor information related to institutions or institutionally related foundations.
- Certain expenditures related to medical/health related services.
- Certain writings related to real estate foundations.

Public Records Also Do Not Include...

- Information security plan of a public agency.
- Information security incident reports.
- Information security audit and assessments.
- Information provided to the state medical marijuana licensing authority.
 - ◆ Section 24-72-202(6)(b), C.R.S.

Public Record Denial of Inspection

- Basis for denying inspection of “public records” found in section 24-72-204, C.R.S.
- Reasons are many, and range from “contrary to any state statute” and court order, to reasons in the public interest such as test questions and scoring keys from licensing exams, security arrangements, trade secrets, certain employment records, etc.

Deliberative Process Privilege

- One such exception is the deliberative process or governmental privilege found in section 24-72-204(3)(a)(XIII), C.R.S. and covers records “if the material is so candid or personal that public disclosure is likely to stifle honest and frank discussion within the government, unless the privilege has been waived.”

Other Reasons to Deny

- Discretionary denial – Section 204(2)(a) – “may deny... unless otherwise provided by law...”
- Mandatory denial – Section 204(3)(a) “shall deny the right of inspection, unless otherwise provided by law...”
- Know your organic act and any related statutes for additional reasons to withhold. Don’t forget relevant federal statutes.

Be Ready to Explain

Section 204(4)



If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied and shall be furnished forthwith to the applicant.



But I Want them NOW!

- The requestor must have access to the records within a “reasonable time.”
- “a ‘reasonable time’ shall be presumed to be three working days or less.”
 - ◆ Sec. 24-72-203(3)(b), C.R.S.
- The period may be extended by seven working days upon finding of “extenuating circumstances.”
 - ◆ Sec. 24-72-203(3)(b), C.R.S.

Extenuating Circumstances

- Section 203(3) spells out what constitutes “extenuating circumstances” and “shall be provided to the person making the request within the three-day period.”
- Most common: “A request involves such a large volume of records that the custodian cannot reasonably prepare or gather the records within the three-day period without substantially interfering with the custodian’s obligation to perform his or her other public service responsibilities.”
Section 203(3)(b)(III).

But...

- “In no event can extenuating circumstances apply to a request that relates to a single, specifically identified document.”
Section 24-72-203(3)(c), C.R.S.

Remedies

Options for Denial of Access Include:

- Requestor may apply to the district court for an order, with court costs and reasonable attorney fees to the prevailing party. Sec. 24-72-204(5), C.R.S. Not clear yet if improper denial of a single document in a large challenge will trigger fees.
- Custodian may sue to obtain a declaratory order determining status of records for CORA request where it cannot be determined. **NO ATTORNEYS FEES!** Section 24-72-204(6), C.R.S.

Open Meetings Law (OML)

- “It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret.” Section 24-6-401, C.R.S.
- To give citizens an expanded opportunity to become fully informed on issues of public importance
- To allow citizens to participate in the legislative decision-making process that affects their personal interests



What is a Meeting?

A Meeting is Defined by the Act as:



Any kind of **gathering**, convened to discuss **public business**, in person, by telephone, electronically, or by other means of communication.



Section 24-6-402(1)(b)

When Are Meetings Considered Public?

- All meetings of two or more members of a state public body at which any **public business** is discussed or at which any **formal action** (public policy, rule making, legislation, policy making, interpretation of policies, rules, regulations, guidance documents or the like) may be taken are declared to be public meetings open to the public at all times. Section 24-6-402(2)(a)
- To determine whether “public business” is discussed, Court looks to policy-making responsibilities and powers of the state body

Board of County Comm’rs v. Costilla County Conservancy Dist, 88 P.3d 1188, 1189 (Colo. 2004); *Intermountain Rural Elec. Assn. v. Colo. PUC*, 298 P.3d 1027 (Colo. App. 2012)



What is Proper Notice?

- Notice must be “full and timely.” Section 24-6-402(2)(c)
- “Full notice” is objective, to be interpreted in light of an ordinary member of the community to whom it is directed . . . to provide fair notice to members of that community. *Town of Marble v. Darien*, 181 P.3d 1148 (Colo. 2008).
- Open Meetings Law imposes no requirement that specific advance notice be given of formal actions that might be taken. Notice is sufficient as long as the items actually considered at the meeting are reasonably related to the subject matter indicated by the notice. *Id.*
- Posting must occur no less than 24 hours prior to the meeting



What Does the Notice Include?

- Date and time of the meeting
- Location of the meeting
- Agenda for meeting
- Specific agenda information if possible
- ADA Considerations?



Minutes

- Minutes are prepared for all meetings. Section 24-6-402(2)(d).
- Minutes are open to the public for review. *Id.*
- Minutes of meeting during which an executive session is authorized shall only reflect the topic discussed in executive session. *Id.*
- SOMB Example – State Audit Example



Email discussions between members regarding public business are subject to public inspection.

What is Executive Session?

- Meeting of the board without the public present
- Can only be used for discussions of specific topics
- Cannot be used to take any formal action
- Exception to Open Meetings Law



Privileged Communications

- Attorney-client privileged discussions are confidential by the Open Meetings Law as well as state statute C.R.S §13-90-107(1)(b) and federal law.
- Privileged communications during Executive Session may be required to be electronically recorded



Executive Session is a Limited Discussion?



- Members may only discuss the topic(s) that were announced during the open public meeting and which were specifically referred to executive session
- Must follow exact process – Mesa County Board of Commissioners lawsuit

Examples of Topics

- **Conferences with an attorney representing the state public body** concerning disputes involving the public body that are the subject of pending or imminent court action, concerning specific claims or grievances, or for purposes of receiving legal advice on specific legal questions.
- Matters required to be kept **confidential** by federal law or rules, state statutes, or in accordance with the requirements of any joint rule of the senate and the house of representatives pertaining to lobbying practices;
- Specialized details of security arrangements or investigations, including defenses against terrorism, both domestic and foreign, and including where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law;
- Determining positions relative to matters that may be subject to negotiations with employees or employee organizations; developing strategy for and receiving reports on the progress of such negotiations; and instructing negotiators;
- All meetings held by members of a state public body subject to this part 4 to consider the appointment or employment of a public official or employee or the dismissal, discipline, promotion, demotion, or compensation of, or the investigation of charges or complaints against, a public official or employee shall be open to the public unless said applicant, official, or employee requests an executive session.

What Cannot Occur in Executive Session?

- Adoption of any proposed policy, position, resolution, rule, regulation, or formal action. Section 24-6-402(3)(a).
- No additional matters may be discussed.



When Don't You Need a Meeting?

- Chance meetings
- Social gatherings at which discussion of public business is not the central purpose
- Other events in which public business is not the central purpose

Section 24-6-402(e), C.R.S.



Failure to Comply With OML

- **Invalidation.** Decisions of the Board may be invalidated should the Board fail to adhere to the requirements of the Open Meetings Law. This may occur in the case of a regularly-scheduled meeting that has not been properly noticed or in a situation where two or more Board members discussed an agenda item in a context outside of a regular meeting. Section 24-6-402(8), C.R.S.
- **Willful Misconduct.** Members who engage in “meetings” outside the regularly scheduled public meetings may be found to have been engaged in “willful misconduct” and, therefore, be subject to removal from the Board.
- **Negative Publicity/Litigation.** Failure to follow the requirements of the Open Meetings Law may result in the Board, and its members, being questioned publicly concerning the content of the alleged outside conversations. Not only does this impact negatively upon the Board but, moreover, should litigation ensue, members may be required to testify against other members either in deposition or at hearing regarding the alleged failure to comply with the law. The remedies available to a party who has been successful in proving a violation of the Open Meetings Law include injunctive relief, costs, and attorney fees. See § 24-6-402(9), C.R.S.
- **Release of Otherwise Confidential Information.** A court may open the portion of the executive session that was held in violation of the Open Meetings Law. Consequently, otherwise confidential information discussed in executive session may be disclosed publicly. Section 24-72-204(5.5), C.R.S; see, e.g., *Gumina v. City of Sterling*, 119 P.2d 527, 532 (Colo. App. 2004) (holding that if a local public body fails strictly to comply with the requirements set forth to convene an executive session, it may not avail itself of the protections afforded by the executive session).

OPEN MEETINGS IN THE TIME OF COVID . . .

Virtual Open Meetings

- Open meetings may be held virtually.
- Public comments are not required, but there are some tips if a board does want to have a public comments be part of an open meeting.
- Tips for a virtual executive session.



West's Colorado Revised Statutes Annotated
Title 43. Transportation
Financing
Article 4. Financing
Part 10. Interstate Rail

C.R.S.A. § 43-4-1002

§ 43-4-1002. Southwest chief rail line economic development, rural tourism,
and infrastructure repair and maintenance fund--creation--use of fund

Effective: May 22, 2017

[Currentness](#)

(1) The southwest chief rail line economic development, rural tourism, and infrastructure repair and maintenance fund is created in the state treasury. The fund consists of any moneys, including but not limited to any gifts, grants, or donations, received by the state from the federal government, local governments, public-private partnerships, or any other person, or as a result of any voter-approved ballot measure, that are dedicated for the purposes of ensuring that the Amtrak southwest chief rail line continues to pass through Colorado and that an additional stop in Pueblo is added to the line, and any other moneys that the general assembly may appropriate or transfer to the fund. Interest and income earned on the deposit and investment of moneys in the fund and all unencumbered and unexpended moneys in the fund at the end of any fiscal year remain in the fund. Subject to annual appropriation by the general assembly, the commission may expend moneys from the fund for its administrative, staffing, and any other operating expenses and for the costs of any necessary studies. Subject to annual appropriation, the commission may also expend moneys from the fund for rail replacement or other improvements to the portion of the BNSF railway line used to provide existing Amtrak southwest chief rail line service in Colorado and to pay costs associated with the expansion of southwest chief rail line service to include a stop in Pueblo.

(2) Repealed by [Laws 2017, Ch. 225, § 3, eff. May 22, 2017](#).

Credits

Added by [Laws 2014, Ch. 185, § 1, eff. Aug. 6, 2014](#). Amended by [Laws 2017, Ch. 225, § 3, eff. May 22, 2017](#).

C. R. S. A. § 43-4-1002, CO ST § 43-4-1002

Current through all legislation of the 2020 Regular Session.

West's Colorado Revised Statutes Annotated
Title 43. Transportation
Financing
Article 4. Financing
Part 10. Interstate Rail

C.R.S.A. § 43-4-1001

§ 43-4-1001. Southwest chief and front range passenger rail service
in Colorado--commission--membership and powers--definitions

Effective: July 1, 2017

[Currentness](#)

(1) As used in this part 10, unless the context otherwise requires:

(a) “Commission” means the southwest chief and front range passenger rail commission created in subsection (2)(a) of this section.

(b) “Front range passenger rail system” means a rail system that transports passengers along the front range and that may include stops at the cities of Fort Collins, Loveland, Longmont, Boulder, Denver, Castle Rock, Colorado Springs, and Pueblo, and includes any appurtenant equipment, buildings, or facilities.

(c) “Fund” means the southwest chief rail line economic development, rural tourism, and infrastructure repair and maintenance fund created in [section 43-4-1002](#).

(2)(a) The southwest chief and front range passenger rail commission is created in the department of transportation. The commission shall exercise its powers and perform its duties as if the same were transferred to the department by a **type 1** transfer, as defined in [section 24-1-105](#). The commission consists of the following eleven commissioners:

(I) Five commissioners appointed by the governor as follows:

(A) Two public rail transportation advocates;

(B) Two representatives of class I freight railroads that serve Colorado; and

(C) One resident of Huerfano, Las Animas, Otero, Prowers, or Pueblo county who has publicly advocated for public rail;

(II) One commissioner from each of the following metropolitan planning organizations, as defined in [section 43-1-1102\(4\)](#), and regional planning commissions, as defined in [section 43-1-1102\(5\)](#), appointed by the governing body of each organization or commission:

(A) The north front range metropolitan planning organization;

(B) The Denver regional council of governments;

(C) The Pikes Peak area council of governments;

(D) The Pueblo area council of governments; and

(E) The south central council of governments; and

(III) One commissioner who is a representative of the regional transportation district created and existing pursuant to article 9 of title 32, appointed by the board of the district.

(b) In addition to the eleven commissioners, the commission includes the following two appointed advisors, who shall attend commission meetings and advise the commission but are not voting members of the commission:

(I) An employee of the department of transportation, appointed by the executive director of the department; and

(II) An employee of Amtrak, appointed by the president of Amtrak.

(c)(I) Except as otherwise provided in subsection (2)(c)(II) of this section, appointing authorities shall appoint the initial commissioners and appointed advisors of the commission no later than July 1, 2017, for terms commencing on that date. Commissioners appointed pursuant to subsection (2)(a) of this section shall serve for terms of four years; except that the initial terms of one of the commissioners appointed pursuant to subsection (2)(a)(I)(A) of this section, one of the commissioners appointed pursuant to subsection (2)(a)(I)(B) of this section, and the commissioners appointed pursuant to subsections (2)(a)(II)(A), (2)(a)(II)(C), and (2)(a)(II)(E) of this section are two years. The commission shall elect a chair from its members at its first meeting.

(II) Commissioners appointed pursuant to subsection (2)(a)(II) of this section shall be appointed no later than May 15, 2017, for terms commencing on July 1, 2017.

(d) Commissioners serve without compensation but receive reimbursement for expenses.

(3)(a) The mission of the commission is:

(I) To assume and complete the mission of the southwest chief rail line economic development, rural tourism, and infrastructure repair and maintenance commission, as it existed prior to July 1, 2017, by continuing to coordinate and oversee efforts by the state and local governments and cooperate with the states of Kansas and New Mexico, Amtrak, and the BNSF railway to ensure that the track repairs and upgrades required for the continuation of existing southwest chief rail service in Colorado are completed, that such service is extended to Pueblo, and that the benefits of extending such service to Walsenburg are fully explored; and

(II) To facilitate the future of front range passenger rail and, in so doing, to specifically develop draft legislation to facilitate the development of a front range passenger rail system that provides passenger rail service in and along the interstate 25 corridor and that is a well-integrated component of a modern, efficient, and cost-effective multimodal transportation system.

(b) In furtherance of its mission, and in addition to its specific obligation to prepare draft legislation as set forth in subsection (3)(c) of this section and its authority to exercise any other powers and perform any other duties specified in this part 10, the commission has the following powers:

(I) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(II) To accept contributions to and expend money from the fund as authorized by [section 43-4-1002](#);

(III) To enter into memorandums of understanding and intergovernmental agreements with agencies and political subdivisions of the state;

(IV) To contract for necessary services;

(V) To enter into multistage agreements;

(VI) To facilitate the future of front range passenger rail; and

(VII) To have and exercise all powers necessary or incidental to or implied from the specific powers and duties granted in this part 10.

(c) The commission shall prepare draft legislation to facilitate the development of a front range passenger rail system that provides passenger rail service in and along the interstate 25 corridor and that is a well-integrated component of a modern, efficient, and cost-effective multimodal transportation system. The commission shall present the draft legislation to the local government committees of the house of representatives and the senate no later than December 1, 2017. The draft legislation may include any provisions that the commission deems necessary to facilitate the development of a front range passenger rail system.

Credits

Added by [Laws 2014, Ch. 185, § 1, eff. Aug. 6, 2014](#). Repealed and reenacted by [Laws 2017, Ch. 225, § 2, eff. May 22, 2017](#) and July 1, 2017. Amended by [Laws 2017, Ch. 264, § 118, eff. July 1, 2017](#).

C. R. S. A. § 43-4-1001, CO ST § 43-4-1001
Current through all legislation of the 2020 Regular Session.

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