

Representative Stephen G. Handy proposes the following substitute bill:

OPEN MEETINGS AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to open and public meetings.

Highlighted Provisions:

This bill:

- ▶ modifies the purposes for which a closed meeting may be held to include the purpose of receiving legal advice from an attorney who represents the public body, under certain circumstances;
- ▶ authorizes a public body to release confidential information from a closed meeting;
- ▶ prohibits an individual from disclosing confidential information from a closed meeting, except under certain circumstances; and
- ▶ modifies a provision relating to a criminal penalty for violating a closed meeting provision.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 [52-4-205](#), as last amended by Laws of Utah 2014, Chapter 196

27 [52-4-305](#), as enacted by Laws of Utah 2006, Chapter 263



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

30 Section 1. Section [52-4-205](#) is amended to read:

31 **52-4-205. Purposes of closed meetings -- Certain issues prohibited in closed**
32 **meetings.**

33 (1) A closed meeting described under Section [52-4-204](#) may only be held for:

34 (a) except as provided in Subsection (3), discussion of the character, professional
35 competence, or physical or mental health of an individual;

36 (b) strategy sessions to discuss collective bargaining;

37 (c) strategy sessions to discuss pending or reasonably imminent litigation;

38 (d) strategy sessions to discuss the purchase, exchange, or lease of real property,
39 including any form of a water right or water shares, if public discussion of the transaction
40 would:

41 (i) disclose the appraisal or estimated value of the property under consideration; or

42 (ii) prevent the public body from completing the transaction on the best possible terms;

43 (e) strategy sessions to discuss the sale of real property, including any form of a water
44 right or water shares, if:

45 (i) public discussion of the transaction would:

46 (A) disclose the appraisal or estimated value of the property under consideration; or

47 (B) prevent the public body from completing the transaction on the best possible terms;

48 (ii) the public body previously gave public notice that the property would be offered for
49 sale; and

50 (iii) the terms of the sale are publicly disclosed before the public body approves the
51 sale;

52 (f) discussion regarding deployment of security personnel, devices, or systems;

53 (g) investigative proceedings regarding allegations of criminal misconduct;

54 (h) as relates to the Independent Legislative Ethics Commission, conducting business
55 relating to the receipt or review of ethics complaints;

56 (i) as relates to an ethics committee of the Legislature, a purpose permitted under

57 Subsection 52-4-204(1)(a)(iii)(C);

58 (j) as relates to the Independent Executive Branch Ethics Commission created in
59 Section 63A-14-202, conducting business relating to an ethics complaint;

60 (k) as relates to a county legislative body, discussing commercial information as
61 defined in Section 59-1-404;

62 (l) as relates to the Utah Higher Education Assistance Authority and its appointed
63 board of directors, discussing fiduciary or commercial information as defined in Section
64 53B-12-102;

65 (m) deliberations, not including any information gathering activities, of a public body
66 acting in the capacity of:

67 (i) an evaluation committee under Title 63G, Chapter 6a, Utah Procurement Code,
68 during the process of evaluating responses to a solicitation, as defined in Section 63G-6a-103;

69 (ii) a protest officer, defined in Section 63G-6a-103, during the process of making a
70 decision on a protest under Title 63G, Chapter 6a, Part 16, Protests; or

71 (iii) a procurement appeals panel under Title 63G, Chapter 6a, Utah Procurement
72 Code, during the process of deciding an appeal under Title 63G, Chapter 6a, Part 17,
73 Procurement Appeals Board;

74 (n) the purpose of considering information that is designated as a trade secret, as
75 defined in Section 13-24-2, if the public body's consideration of the information is necessary in
76 order to properly conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code;

77 (o) the purpose of discussing information provided to the public body during the
78 procurement process under Title 63G, Chapter 6a, Utah Procurement Code, if, at the time of
79 the meeting:

80 (i) the information may not, under Title 63G, Chapter 6a, Utah Procurement Code, be
81 disclosed to a member of the public or to a participant in the procurement process; and

82 (ii) the public body needs to review or discuss the information in order to properly
83 fulfill its role and responsibilities in the procurement process; ~~or~~

84 (p) a purpose for which a meeting is required to be closed under Subsection (2)[-]; or

85 (q) the purpose of receiving legal advice from an attorney who represents the public
86 body:

87 (i) concerning a matter that federal or state law, rule, or regulation requires to be kept

88 confidential;

89 (ii) if the attorney's providing legal advice to the public body in an open meeting would
90 conflict with the attorney's duty under the Rules of Professional Conduct; or

91 (iii) concerning a discussion of contract negotiations relating to a proposed transaction

92 if:

93 (A) the public body gives prior notice that contract negotiations may be discussed
94 during a closed meeting;

95 (B) discussing the transaction in an open meeting would disclose the public body's
96 negotiation strategy or prevent the public body from completing the transaction on the best
97 possible terms; and

98 (C) the public body discloses the terms of the contract resulting from the contract
99 negotiations before approving the contract.

100 (2) The following meetings shall be closed:

101 (a) a meeting of the Health and Human Services Interim Committee to review a fatality
102 review report described in Subsection 62A-16-301(1)(a), and the responses to the report
103 described in Subsections 62A-16-301(2) and (4);

104 (b) a meeting of the Child Welfare Legislative Oversight Panel to:

105 (i) review a fatality review report described in Subsection 62A-16-301(1)(a), and the
106 responses to the report described in Subsections 62A-16-301(2) and (4); or

107 (ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5);

108 and

109 (c) a meeting of a conservation district as defined in Section 17D-3-102 for the purpose
110 of advising the Natural Resource Conservation Service of the United States Department of
111 Agriculture on a farm improvement project if the discussed information is protected
112 information under federal law.

113 (3) In a closed meeting, a public body may not:

114 (a) interview a person applying to fill an elected position;

115 (b) discuss filling a midterm vacancy or temporary absence governed by Title 20A,
116 Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office;
117 or

118 (c) discuss the character, professional competence, or physical or mental health of the

119 person whose name was submitted for consideration to fill a midterm vacancy or temporary
120 absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and
121 Temporary Absence in Elected Office.

122 (4) The presence of an attorney representing the public body at a meeting of the public
123 body does not alone provide a basis for the public body to close a meeting under Subsection
124 (1)(q).

125 (5) At any time after a public body holds a closed meeting, the public body may, by
126 motion in an open meeting, authorize the public release of confidential information
127 disseminated or discussed during the closed meeting.

128 (6) An individual who attends a closed meeting may not disseminate or discuss
129 confidential information that was disseminated or discussed during the closed meeting unless:

130 (a) the public body has authorized the public release of the information as provided in
131 Subsection (5);

132 (b) the information has already been separately made available to the public; or

133 (c) the discussion of confidential information is necessary:

134 (i) to implement advice from an attorney representing the public body; or

135 (ii) to conduct negotiations that were discussed in the closed meeting.

136 Section 2. Section **52-4-305** is amended to read:

137 **52-4-305. Criminal penalty for closed meeting violation.**

138 In addition to any other penalty under this chapter, [~~a member of a public body~~] an
139 individual who knowingly or intentionally violates or who knowingly or intentionally abets or
140 advises a violation of any of the closed meeting provisions of this chapter is guilty of a class B
141 misdemeanor.