

1 S.67

2 Introduced by Senator White

3 Referred to Committee on

4 Date:

5 Subject: Government operations; open meetings

6 Statement of purpose: This bill proposes to amend the open meeting law to
7 clarify when a public body may enter executive session. The bill also proposes
8 to allow members of a public body to participate in a meeting if certain
9 requirements are met. In addition, the bill proposes to authorize the award of
10 attorney's fees and litigation costs to a complainant who substantially prevails
11 in a case alleging violation of the open meeting law.

12 An act relating to the open meeting law

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 Sec. 1. 1 V.S.A. § 310 is amended to read:

15 § 310. DEFINITIONS

16 As used in this subchapter:

17 (1) "Deliberations" means weighing, examining, and discussing the
18 reasons for and against an act or decision, but expressly excludes the taking of
19 evidence and the arguments of parties.

1 (2) “Meeting” means a gathering of a quorum of the members of a
2 public body in a physical place for the purpose of discussing the business of
3 the public body or for the purpose of taking action. “Meeting” shall not mean
4 an electronic communication, including e-mail, telephone, or teleconferencing,
5 between members of a public body for the purpose of scheduling a meeting,
6 developing an agenda, or distributing materials to discuss at a meeting,
7 provided that such an electronic communication that results in written or
8 recorded information shall be available for inspection and copying under the
9 public records act as set forth in chapter 5, subchapter 4 of this title..

10 (3) “Public body” means any board, council, or commission of the state
11 or one or more of its political subdivisions, any board, council, or commission
12 of any agency, authority, or instrumentality of the state or one or more of its
13 political subdivisions, or any committee of any of the foregoing boards,
14 councils or commissions, except that “public body” does not include councils
15 or similar groups established by the governor for the sole purpose of advising
16 the governor with respect to policy.

17 (4) “Publicly announced” means that notice is given to:

18 (A) an editor, publisher, or news director of a newspaper or radio
19 station serving the area of the state in which the public body has jurisdiction,
20 ~~and to:~~

1 (B) any editor, publisher, or news director who has requested under
2 ~~section~~ subdivision 312(c)(5) of this title to be notified of special meetings;
3 and

4 (C) any person who requests from a public body notice of a regular
5 or special meeting.

6 (5) “Quasi-judicial proceeding” means a proceeding which is:

7 (A) a contested case under the Vermont Administrative Procedure
8 Act; or

9 (B) a case in which the legal rights of one or more persons who are
10 granted party status are adjudicated, which is conducted in such a way that all
11 parties have opportunity to present evidence and to cross-examine witnesses
12 presented by other parties, which results in a written decision, and the result of
13 which is appealable by a party to a higher authority.

14 Sec. 2. 1 V.S.A. § 312 is amended to read:

15 § 312. RIGHT TO ATTEND MEETINGS OF PUBLIC AGENCIES

16 (a)(1) All meetings of a public body are declared to be open to the public at
17 all times, except as provided in section 313 of this title. No resolution, rule,
18 regulation, appointment, or formal action shall be considered binding except as
19 taken or made at such open meeting, except as provided under ~~section~~
20 ~~313(a)(2)~~ subdivision 313(b)(2) of this title. ~~A meeting may be conducted by~~
21 ~~audio conference or other electronic means, as long as the provisions of this~~

1 ~~subchapter are met.~~ Any person with a disability as defined in 9 V.S.A. § 4501
2 who timely requests that the public body provide reasonable accommodation to
3 mitigate the person's disability shall be afforded such accommodation
4 necessary to allow the person to attend and participate in a meeting. A public
5 body shall electronically record ~~by audio tape,~~ all hearings held to provide a
6 forum for public comment on a proposed rule, pursuant to 3 V.S.A. § 840. The
7 public shall have access to copies of ~~such tapes~~ electronic recordings as
8 described in section 316 of this title.

9 (2) One or more of the members of a public body may participate in a
10 meeting by electronic or other means of communication provided that:

11 (A) A quorum of the public body is physically present at the place of
12 the meeting designated or announced under subsection (c) of this section.

13 (B) A member participating by electronic or other means of
14 communication shall:

15 (i) be audible to the public at the meeting and shall be able to hear
16 a member of the public speaking at the meeting;

17 (ii) be able to simultaneously hear each member and speak to each
18 member during the meeting; and

19 (iii) identify any person present in the location from which the
20 member is participating.

1 (C) No meeting shall be conducted by electronic mail or other means
2 of communication that does not permit the public to hear or otherwise discern
3 the discussion of the public body at the meeting.

4 (D) The public body meets all other requirements of this subchapter
5 in holding a meeting.

6 (E) A member participating in the meeting by electronic or other
7 means of communication may be allowed to vote, but only if such vote is taken
8 by roll call.

9 (b)(1) Minutes shall be taken of all meetings of public bodies. The minutes
10 shall cover all topics and motions that arise at the meeting and give a true
11 indication of the business of the meeting. Minutes shall include at least the
12 following minimal information:

13 (A) All members of the public body present;

14 (B) All other active participants in the meeting;

15 (C) All motions, proposals, and resolutions made, offered, and
16 considered, and what disposition is made of same; and

17 (D) The results of any votes, with a record of the individual vote of
18 each member if a roll call is taken.

19 (2) Minutes of all public meetings shall be matters of public record,
20 shall be kept by the clerk or secretary of the public body, and shall be available

1 for inspection by any person and for purchase of copies at cost upon request
2 after five days from the date of any meeting.

3 (c)(1) The time and place of all regular meetings subject to this section
4 shall be clearly designated by statute, charter, regulation, ordinance, bylaw,
5 resolution, or other determining authority of the public body, and this
6 information shall be available to any person upon request.

7 (2) The time, place, and purpose of a special meeting subject to this
8 section shall be publicly announced at least 24 hours before the meeting.

9 Municipal public bodies shall post notices of special meetings in or near the
10 municipal clerk's office and in at least two other public places in the
11 municipality, at least 24 hours before the meeting. In addition, notice shall be
12 given, either orally or in writing, to each member of the public body at least
13 24 hours before the meeting, except that a member may waive notice of a
14 special meeting.

15 (3) Emergency meetings may be held without public announcement,
16 without posting of notices and without 24-hour notice to members, provided
17 some public notice thereof is given as soon as possible before any such
18 meeting. Emergency meetings may be held only when necessary to respond to
19 an unforeseen occurrence or condition requiring immediate attention by the
20 public body.

1 (4) Any adjourned meeting shall be considered a new meeting, unless
2 the time and place for the adjourned meeting is announced before the meeting
3 adjourns.

4 (5) An editor, publisher, or news director of any newspaper, radio
5 station, or television station serving the area of the state in which the public
6 body has jurisdiction may request in writing that a public body notify the
7 editor, publisher, or news director of special meetings of the public body. The
8 request shall apply only to the calendar year in which it is made, unless made
9 in December, in which case it shall apply also to the following year.

10 (d) The agenda for a regular or special meeting shall be made available to
11 the news media or concerned persons prior to the meeting upon specific
12 request.

13 (e) Nothing in this section or in section 313 of this title shall be construed
14 as extending to the judicial branch of the government of Vermont or of any
15 part of the same or to the public service board; nor shall it extend to the
16 deliberations of any public body in connection with a quasi-judicial
17 proceeding; nor shall anything in this section be construed to require the
18 making public of any proceedings, records, or acts which are specifically made
19 confidential by the laws of the United States of America or of this state.

1 (f) A written decision issued by a public body in connection with a
2 quasi-judicial proceeding need not be adopted at an open meeting if the
3 decision will be a public record.

4 (g) The provisions of this subchapter shall not apply to site inspections for
5 the purpose of assessing damage or making tax assessments or abatements,
6 clerical work, or work assignments of staff or other personnel. Routine
7 day-to-day administrative matters that do not require action by the public body,
8 may be conducted outside a duly warned meeting, provided that no money is
9 appropriated, expended, or encumbered.

10 (h) At an open meeting the public shall be given a reasonable opportunity
11 to express its opinion on matters considered by the public body during the
12 meeting as long as order is maintained. Public comment shall be subject to
13 reasonable rules established by the chairperson. This subsection shall not
14 apply to quasi-judicial proceedings.

15 (i) Nothing in this section shall be construed to prohibit the parole board
16 from meeting at correctional facilities with attendance at the meeting subject to
17 rules regarding access and security established by the superintendent of the
18 facility.

1 Sec. 3. 1 V.S.A. § 313 is amended to read:

2 § 313. EXECUTIVE SESSIONS

3 (a) No public body described in section 312 of this title may hold an
4 executive session from which the public is excluded, except by the affirmative
5 vote of two-thirds of its members present in the case of any public body of
6 state government or of a majority of its members present in the case of any
7 public body of a municipality or other political subdivision. A motion to go
8 into executive session shall indicate the nature of the business of the executive
9 session, and no other matter may be considered in the executive session. Such
10 vote shall be taken in the course of an open meeting and the result of the vote
11 recorded in the minutes. No formal or binding action shall be taken in
12 executive session except actions relating to the securing of real estate options
13 under subdivision (b)(2) of this ~~subsection~~ section. Minutes of an executive
14 session need not be taken, but if they are, shall not be made public subject to
15 subsection 312(b) of this title. ~~A public body may not hold an executive~~
16 ~~session except to consider one or more of the following:~~

17 ~~(1) Contracts, labor relations agreements with employees, arbitration,~~
18 ~~mediation, grievances, civil actions, or prosecutions by the state, where~~
19 ~~premature general public knowledge would clearly place the state,~~
20 ~~municipality, other public body, or person involved at a substantial~~
21 ~~disadvantage;~~

1 (b) A public body may hold an executive session only for one or more of
2 the following purposes:

3 (1) Where the public body determines that premature general public
4 knowledge clearly would place the public body or a person involved at a
5 substantial disadvantage when addressing one of the following:

6 (A) Consideration or negotiation of contracts;

7 (B) Consideration or negotiation of labor relations agreements with
8 employees;

9 (C) Conduct of arbitration or mediation;

10 (D) To hear grievances, other than tax grievances; or

11 (E) To consider civil actions or prosecutions.

12 ~~(2) The negotiating or securing of~~ To negotiate or secure real estate
13 purchase options;

14 ~~(3) The~~ To consider the appointment or employment or evaluation of a
15 public officer or employee other than the appointment of a person to a public
16 board, council, or commission;

17 ~~(4) A~~ To conduct a disciplinary or dismissal action against a public
18 officer or employee; but nothing in this subsection shall be construed to impair
19 the right of such officer or employee to a public hearing if formal charges are
20 brought;

21 ~~(5) A~~ To consider a clear and imminent peril to the public safety;

1 (6) ~~Discussion or consideration of~~ To discuss or consider records or
2 documents ~~excepted~~ exempted from the access to public records provisions of
3 ~~subsection~~ section 317~~(b)~~ of this title. Discussion or consideration of the
4 ~~excepted~~ exempted record or document shall not itself permit an extension of
5 the executive session to the general subject to which the record or document
6 pertains;

7 (7) ~~The~~ To consider academic records or suspension or discipline of
8 students;

9 (8) ~~Testimony~~ To take or hear testimony from a person in a parole
10 proceeding conducted by the parole board if public disclosure of the identity of
11 the person could result in physical or other harm to the person;

12 (9) ~~Information~~ To consider information relating to a pharmaceutical
13 rebate or to supplemental rebate agreements, which is protected from
14 disclosure by federal law or the terms and conditions required by the Centers
15 for Medicare and Medicaid Services as a condition of rebate authorization
16 under the Medicaid program, considered pursuant to 33 V.S.A. §§ 1998(f)(2)
17 and 2002(c).

18 ~~(b)~~(c) Attendance in executive session shall be limited to members of the
19 public body, and, in the discretion of the public body, its staff, clerical
20 assistants and legal counsel, and persons who are subjects of the discussion or
21 whose information is needed.

1 ~~(e)~~(d) The senate and house of representatives, in exercising the power to
2 make their own rules conferred by Chapter II of the Vermont Constitution,
3 shall be governed by the provisions of this section in regulating the admission
4 of the public as provided in Chapter II, § 8 of the Constitution.

5 Sec. 4. 1 V.S.A. § 314 is amended to read:

6 § 314. PENALTY AND ENFORCEMENT

7 (a) A person who is a member of a public body or who is an employee of a
8 public body and who knowingly and intentionally violates the provisions of
9 this subchapter or who knowingly and intentionally participates in the
10 wrongful exclusion of any person or persons from any meeting for which
11 provision is herein made, shall be guilty of a misdemeanor and shall be fined
12 not more than \$500.00.

13 (b) The attorney general or any person aggrieved by a violation of the
14 provisions of this subchapter may apply to the superior court in the county in
15 which the violation has taken place for appropriate injunctive relief or for a
16 declaratory judgment. Except as to cases the court considers of greater
17 importance, proceedings before the superior court, as authorized by this section
18 and appeals therefrom, take precedence on the docket over all cases and shall
19 be assigned for hearing and trial or for argument at the earliest practicable date
20 and expedited in every way.

1 (c)(1) The court may assess against a public body found to have violated
2 the requirements of this subchapter reasonable attorney fees and other
3 litigation costs reasonably incurred in any case under this subchapter in which
4 the complainant has substantially prevailed.

5 (2) For purposes of this subsection, a complainant has substantially
6 prevailed if the complainant obtains relief through:

7 (A) a judicial order, or an enforceable written agreement or consent
8 decree; or

9 (B) a voluntary or unilateral change in position by the agency, if the
10 complainant's claim is not insubstantial.

11 Sec. 5. EFFECTIVE DATE

12 This act shall take effect on July 1, 2011.