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H.153

Introduced by Representatives Browning of Arlington, Batchelor of Derby,
Burditt of West Rutland, Gage of Rutland City, Graham of
Williamstown, LaClair of Barre Town, Marcotte of Coventry,
Morrissey of Bennington, Myers of Essex, Parent of St. Albans
City, Purvis of Colchester, Quimby of Concord, Smith of New
Haven, Strong of Albany, Terenzini of Rutland Town,
Van Wyck of Ferrisburgh, Viens of Newport City, and Willhoit
of St. Johnsbury

Referred to Committee on

Date:

Subject: Public Records Act; exemptions; executive privilege; enforcement

Statement of purpose of bill as introduced: This bill proposes to:

- (1) define the scope of the executive privilege in the context of its applicability as an exemption to the Public Records Act;
- (2) limit the applicability of the Public Records Act exemptions for executive privilege and for records relevant to litigation, in connection with records relating to a report or other material required to be submitted to the General Assembly by a date certain, if the report or other material is not timely submitted;

1 Sec. 2. 1 V.S.A. § 319 is amended to read:

2 § 319. ENFORCEMENT

3 (a) Any person aggrieved by the denial of a request for public records
4 under this subchapter may apply to the Civil Division of the Superior Court in
5 the county in which the complainant resides, or has his or her personal place of
6 business, or in which the public records are situated, or in the Civil Division of
7 the Superior Court of Washington County, to enjoin the public agency from
8 withholding agency records and to order the production of any agency records
9 improperly withheld from the complainant. In such a case, the Court shall
10 determine the matter de novo, and may examine the contents of such agency
11 records in camera to determine whether such records or any part thereof shall
12 be withheld under any of the exemptions set forth in section 317 of this title,
13 and the burden of proof shall be on the public agency to sustain its action.

14 (b) Except as to cases the Court considers of greater importance,
15 proceedings before the Civil Division of the Superior Court, as authorized by
16 this section, and appeals ~~there from~~ therefrom, take precedence on the docket
17 over all cases and shall be ~~assigned for hearing and trial or for argument at the~~
18 ~~earliest practicable date and~~ expedited in every way. The Superior judge shall
19 decide any motion for judgment on the pleadings or motion for summary
20 judgment filed by the complainant not more than 45 days after the motion is
21 filed, unless the complainant requests or agrees to an extension of this period

1 or the judge makes specific findings that the interests of justice require a longer
2 period. Notwithstanding any contrary provision in the Vermont Rules of Civil
3 Procedure, the Superior judge shall have full authority to manage the parties'
4 filing deadlines in order to comply with the 45-day period. A Superior judge's
5 failure to timely issue a decision in accordance with this subsection may be
6 enforced by a complaint for extraordinary relief in the Supreme Court pursuant
7 to Rule 21 of the Vermont Rules of Appellate Procedure.

8 * * *

9 Sec. 3. 4 V.S.A. § 608 is amended to read:

10 § 608. FUNCTIONS

11 (a) Declarations submitted to the General Assembly by a Supreme Court
12 Justice under subsection 4(c) of this title, by a Superior Court judge under
13 subsection 71(b) of this title, or by a magistrate under subsection 461(c) of this
14 title shall be referred immediately to the Joint Committee on Judicial
15 Retention. The declarations shall be accompanied by a supporting statement
16 by the judge, the ~~justice~~ Justice, or the magistrate seeking retention. In the
17 case of a Superior Court judge or magistrate, the declaration shall also be
18 accompanied by information on the next succeeding rotation schedule for the
19 judge seeking retention.

20 (b) The Joint Committee responsible for the recommendation of retention
21 shall review the candidacies of those ~~justices~~ Justices, superior judges, and

1 magistrates desiring to succeed themselves. In conducting its review, the
2 ~~committee~~ Committee shall evaluate judicial performance, including such
3 factors as integrity, judicial temperament, impartiality, health, diligence, legal
4 knowledge and ability, ~~and~~ administrative and communicative skills, and
5 compliance with statutory mandates regarding priorities and time frames for
6 the handling of cases.

7 * * *

8 Sec. 4. APPLICABILITY OF ACT

9 (a) Sec. 1 of this act shall apply to any record produced or acquired on or
10 after the effective date of this act.

11 (b) The time period for decisions and the enforcement provisions of Sec. 2
12 of this act shall apply to any action brought on or after the effective date of
13 this act.

14 Sec. 5. EFFECTIVE DATE

15 This act shall take effect on July 1, 2015.