

1 S.67

2 Introduced by Senator White

3 Referred to Committee on Government Operations

4 Date: February 15, 2011

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 ~~(c)(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.~~

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

*§ 310. DEFINITIONS*

*As used in this subchapter:*

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

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

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

(4) "Publicly announced" means that notice is given to an editor, publisher, or news director of a newspaper or radio station serving the area of the state in which the public body has jurisdiction, and to any editor, publisher, or news director who has requested under subdivision 312(c)(5) of this title to be notified of special meetings.

(5) "Quasi-judicial proceeding" means a proceeding which is:

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

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

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

### § 312. RIGHT TO ATTEND MEETINGS OF PUBLIC AGENCIES

(a)(1) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. No resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at such open meeting, except as provided under ~~section 313(a)(2)~~ subdivision 313(b)(1) of this title. ~~A meeting may be conducted by audio conference or other electronic means, as long as the provisions of this subchapter are met.~~ Any person with a disability as defined in 9 V.S.A. § 4501 who timely requests that the public body provide reasonable accommodation to mitigate the person's disability shall be afforded such reasonable accommodation necessary to allow the person to attend and participate in a meeting. A public body shall electronically record ~~by audio tape,~~ all hearings held to provide a forum for public comment on a proposed rule, pursuant to 3 V.S.A. § 840. The public shall have access to copies of ~~such tapes~~ electronic recordings as described in section 316 of this title.

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

(A) At least 24 hours before the meeting, the public body shall publicly announce the meeting and a municipal public body shall post notice of the meeting in or near the municipal clerk's office and in at least two other public places in the municipality.

(B) The public announcement and posted notice of the meeting shall identify:

(i) at least one physical location where a member of the public can attend and participate in the meeting; or

(ii) an electronic or other means by which the public can access the meeting from a remote location.

(C) Each member participating by electronic or other means of communication shall:

(i) be audible to the public at the physical location identified in subdivision (2)(B)(i) of this subsection and to those members of the public participating by the electronic or other means identified in subdivision (2)(B)(ii) of this subsection; and

(ii) be able to simultaneously hear each member and speak to each member during the meeting.

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

(E) A vote of the public body shall be taken by roll call.

(3) Electronic communications may be distributed among members of a public body, provided that such communications shall not be used to circumvent the spirit or the requirements of this subchapter.

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

(A) All members of the public body present;

(B) All other active participants in the meeting;

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

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

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

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

*(c)(1) The time and place of all regular meetings subject to this section shall be clearly designated by statute, charter, regulation, ordinance, bylaw, resolution, or other determining authority of the public body, and this information shall be available to any person upon request. The time and place of all public hearings and meetings scheduled by all executive branch state agencies, departments, boards, or commissions shall be available to the public as required under 3 V.S.A. § 2222(c).*

*(2) The time, place, and purpose of a special meeting subject to this section shall be publicly announced at least 24 hours before the meeting. Municipal public bodies shall post notices of special meetings in or near the municipal clerk's office and in at least two other public places in the municipality, at least 24 hours before the meeting. In addition, notice shall be given, either orally or in writing, to each member of the public body at least 24 hours before the meeting, except that a member may waive notice of a special meeting.*

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

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

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

*(d) The agenda for a regular or special meeting shall be:*

*(1) posted to the public body's website, if one exists;*

*(2) posted by a municipal public body in or near the municipal office and in at least two other public places in the municipality; and*

*(3) made available to the news media or concerned persons prior to the meeting upon specific request.*



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

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

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

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

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

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

**§ 313. EXECUTIVE SESSIONS**

*(a) No public body described in section 312 of this title may hold an executive session from which the public is excluded, except by the affirmative vote of two-thirds of its members present in the case of any public body of state government or of a majority of its members present in the case of any public body of a municipality or other political subdivision. A motion to go into executive session shall indicate the nature of the business of the executive session, and no other matter may be considered in the executive session. Such vote shall be taken in the course of an open meeting and the result of the vote recorded in the minutes. No formal or binding action shall be taken in executive session except for actions relating to the securing of real estate options under subdivision ~~(2)~~ (b)(1) of this ~~subsection~~ section. Minutes of an executive session need not be taken, but if they are, shall not be made public*

~~subject to subsection 312(b) of this title. A public body may not hold an executive session except to consider one or more of the following:~~

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

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

~~(2) The negotiating or securing of (1) To negotiate or secure real estate purchase options;~~

~~(3)(2) The To consider the appointment or employment or evaluation of a public officer or employee other than the appointment of a person to a public board, council, or commission;~~

~~(4)(3) A To conduct a disciplinary or dismissal action against a public officer or employee; but nothing in this subsection shall be construed to impair the right of such officer or employee to a public hearing if formal charges are brought;~~

~~(5)(4) A To consider a clear and imminent peril to the public safety;~~

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

~~(7)(6) The To consider academic records or suspension or discipline of students;~~

~~(8)(7) Testimony To take or hear testimony from a person in a parole proceeding conducted by the parole board if public disclosure of the identity of the person could result in physical or other harm to the person;~~

~~(9)(8) Information To consider information relating to a pharmaceutical rebate or to supplemental rebate agreements, which is protected from disclosure by federal law or the terms and conditions required by the Centers for Medicare and Medicaid Services as a condition of rebate authorization under the Medicaid program, considered pursuant to 33 V.S.A. §§ 1998(f)(2) and 2002(c);~~

~~(9) To discuss or consider municipal or school security or emergency response measures, the disclosure of which could jeopardize public safety;~~

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

(A) Consideration or negotiation of contracts;

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

(C) Conduct of arbitration or mediation;

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

(E) Consideration of civil actions or prosecutions.

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

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

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

§ 314. PENALTY AND ENFORCEMENT

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

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

(c) After receipt by the public body of written notice that alleges a specific violation of this subchapter and that requests a specific cure of such violation, the public body may cure the violation, subject to the following:

(1) Upon receipt of written notice of an alleged violation of this subchapter, the public body shall have 21 calendar days to respond publicly to the alleged violation and:

(A) Acknowledge the open meeting violation and state an intent to cure the violation; or

(B) State that the public body has determined that no violation has occurred and that no cure is necessary.

(2) Failure of a public body to respond to a notice of alleged violation shall be treated as a denial of the violation for purposes of enforcement of the requirements of this subchapter.

(3) Following a public body's acknowledgment of a violation under subdivision (1)(A) of this subsection, the public body shall have 14 calendar days to cure the violation by declaring as void an action or actions taken at or resulting from a meeting in violation of this subchapter.

(4) A public body that cures an alleged violation of this subchapter under this subsection shall not be subject to an assessment of attorney's fees and litigation costs under subsection (d) of this section.

(d) The court shall assess against a public body found to have violated the requirements of this subchapter reasonable attorney's fees and other litigation costs reasonably incurred in any case under this subchapter in which the complainant has substantially prevailed, unless the court finds that:

(1) The public body had a reasonable basis in fact and law for its position; and

(2) The public body acted in good faith.

**Sec. 5. EFFECTIVE DATE**

This act shall take effect on July 1, 2011.