

1 H.497

2 Introduced by Representative Sweaney of Windsor

3 Referred to Committee on

4 Date:

5 Subject: Government operations; open meeting

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

7 (1) amend the open meeting law to clarify when a public body may enter
8 executive session;

9 (2) allow members of a public body to participate in a meeting remotely
10 if certain requirements are met;

11 (3) amend provisions related to meeting agendas; and

12 (4) require the award of attorney's fees and litigation costs to a
13 complainant who substantially prevails in a case alleging a violation of the
14 open meeting law, unless the public body cured the violation or had a
15 reasonable basis in fact and law for its position and acted in good faith.

16 An act relating to the open meeting law

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

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

19 § 310. DEFINITIONS

20 As used in this subchapter:

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

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

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

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

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)(1) 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.~~ A meeting of a public body is subject to the public
2 accommodation requirements of 9 V.S.A. chapter 139. A public body shall
3 electronically record by audio tape, all public hearings held to provide a forum
4 for public comment on a proposed rule, pursuant to 3 V.S.A. § 840. The
5 public shall have access to copies of ~~such tapes~~ electronic recordings as
6 described in section 316 of this title.

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

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

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

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

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

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

21 (i) identify himself or herself when the meeting is convened;

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

5 (iii) be able to simultaneously hear each member and speak to
6 each member during the meeting.

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

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

10 (3) Written correspondence and electronic communications may be
11 distributed among members of a public body, provided that such
12 communications shall not be used to circumvent the spirit or the requirements
13 of this subchapter.

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

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

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

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

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

3 (2) Minutes of all public meetings shall be matters of public record,
4 shall be kept by the clerk or secretary of the public body, and shall be available
5 for inspection by any person and for purchase of copies at cost upon request
6 after five days from the date of any meeting.

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

14 (2) The time, place, and purpose of a special meeting subject to this
15 section shall be publicly announced at least 24 hours before the meeting.
16 Municipal public bodies shall post notices of special meetings in or near the
17 municipal clerk's office and in at least two other public places in the
18 municipality, at least 24 hours before the meeting. In addition, notice shall be
19 given, either orally or in writing, to each member of the public body at least
20 24 hours before the meeting, except that a member may waive notice of a
21 special meeting.

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

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

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

16 (d)(1) ~~The~~ At least 24 hours prior to a meeting, the agenda for a regular or
17 special meeting shall be:

18 (A) posted to a website, if one exists, that the public body maintains
19 or designates as the official website of the body;

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

1 (C) made available to the news media or concerned persons prior to
2 the meeting upon specific request.

3 (2) Adjustments to the agenda of a public body may be made as the first
4 act of business at a public meeting.

5 (e) Nothing in this section or in section 313 of this title shall be construed
6 as extending to the ~~judicial branch~~ Judicial Branch of the ~~government~~
7 Government of Vermont or of any part of the same or to the ~~public service~~
8 ~~board~~ Public Service Board; nor shall it extend to the deliberations of any
9 public body in connection with a quasi-judicial proceeding; nor shall anything
10 in this section be construed to require the making public of any proceedings,
11 records, or acts which are specifically made confidential by the laws of the
12 United States of America or of this state.

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

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

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

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

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

11 § 313. EXECUTIVE SESSIONS

12 (a) No public body described in section 312 of this title may hold an
13 executive session from which the public is excluded, except by the affirmative
14 vote of two-thirds of its members present in the case of any public body of
15 state government or of a majority of its members present in the case of any
16 public body of a municipality or other political subdivision. A motion to go
17 into executive session shall indicate the nature of the business of the executive
18 session, and no other matter may be considered in the executive session. Such
19 vote shall be taken in the course of an open meeting and the result of the vote
20 recorded in the minutes. No formal or binding action shall be taken in
21 executive session except for actions relating to the securing of real estate

1 options under subdivision ~~(2)~~ (b)(1) of this ~~subsection~~ section. Minutes of an
2 executive session need not be taken, but if they are, shall not be made public
3 subject to subsection 312(b) of this title. ~~A public body may not hold an~~
4 ~~executive session except to consider one or more of the following:~~

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

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

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

14 ~~(3)(2) The~~ To consider the appointment or employment or evaluation of
15 a public officer or employee, including discussion, interview, and evaluation of
16 the merits of a candidate for public office or employment, provided that a final
17 decision to hire or appoint a public officer or employee shall be made in an
18 open meeting;

19 ~~(4)(3) A~~ To conduct a disciplinary or dismissal action against a public
20 officer or employee; but nothing in this subsection shall be construed to impair

1 the right of such officer or employee to a public hearing if formal charges are
2 brought;

3 ~~(5)(4) A~~ To consider a clear and imminent peril to the public safety;

4 ~~(6)(5) Discussion or consideration of~~ To discuss or consider records or
5 documents ~~excepted~~ exempt from the access to public records provisions of
6 section ~~317~~ 316 of this title. Discussion or consideration of the ~~excepted~~
7 record or document shall not itself permit an extension of the executive session
8 to the general subject to which the record or document pertains;

9 ~~(7)(6) The~~ To consider academic records or suspension or discipline of
10 students;

11 ~~(8)(7) Testimony~~ To take or hear testimony from a person in a parole
12 proceeding conducted by the parole board if public disclosure of the identity of
13 the person could result in physical or other harm to the person;

14 ~~(9)(8) Information~~ To consider information relating to a pharmaceutical
15 rebate or to supplemental rebate agreements, which is protected from
16 disclosure by federal law or the terms and conditions required by the Centers
17 for Medicare and Medicaid Services as a condition of rebate authorization
18 under the Medicaid program, considered pursuant to 33 V.S.A. §§ 1998(f)(2)
19 and 2002(c);

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

1 (10) For one or more of the following purposes, where the public body
2 determines that premature general public knowledge would place the public
3 body or a person involved at a substantial disadvantage:

4 (A) To consider or negotiate contracts;

5 (B) To consider or negotiate labor relations agreements with
6 employees;

7 (C) To conduct arbitration or mediation;

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

9 (E) To meet with an attorney to discuss pending civil litigation or a
10 prosecution, to which the public body is a party.

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

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

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

2 § 314. PENALTY AND ENFORCEMENT

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

10 (b) ~~The attorney general~~ Prior to instituting an action under subsection (c)
11 of this section, the Attorney General or any person aggrieved by a violation of
12 the provisions of this subchapter shall provide the public body written notice
13 that alleges a specific violation of this subchapter and requests a specific cure
14 of such violation. The public body may cure the violation, subject to the
15 following:

16 (1) Upon receipt of the written notice of alleged violation, the public
17 body shall have five business days to respond publicly to the alleged
18 violation by:

19 (A) acknowledging the violation of this subchapter and stating an
20 intent to cure the violation within 14 calendar days; or

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

3 (2) Failure of a public body to respond to a notice of alleged violation
4 within five business days of receipt of notice under subdivision (1) of this
5 subsection shall be treated as a denial of the violation for purposes of
6 enforcement of the requirements of this subchapter.

7 (3) Within 14 calendar days after a public body acknowledges a
8 violation under subdivision (1)(A) of this subsection, the public body shall
9 cure the violation by declaring as void an action or actions taken at, or
10 resulting from, a meeting in violation of this subchapter, or, in the case of a
11 procedural violation, by adopting specific measures that actually prevent future
12 procedural violations. An action declared void may be ratified at an open
13 meeting that satisfies the provisions of this subchapter.

14 (4) A public body that cures in fact a violation of this subchapter under
15 this subsection shall not be assessed attorney's fees and litigation costs under
16 subsection (d) of this section.

17 (c) Following expiration of the five-business-day time period of
18 subdivision (b)(1) of this section and, if applicable, the additional
19 14-calendar-day cure period for public bodies acknowledging a violation under
20 subdivision (b)(1)(A) of this section, the Attorney General or any person
21 aggrieved by a violation of the provisions of this subchapter may apply to the

1 ~~superior court~~ Civil Division of the Superior Court in the county in which the
2 violation has taken place for appropriate injunctive relief or for a declaratory
3 judgment. Except as to cases the court considers of greater importance,
4 proceedings before the ~~superior court~~ Civil Division of the Superior Court, as
5 authorized by this section and appeals therefrom, take precedence on the
6 docket over all cases and shall be assigned for hearing and trial or for argument
7 at the earliest practicable date and expedited in every way.

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

12 (1)(A) the public body had a reasonable basis in fact and law for its
13 position; and

14 (B) the public body acted in good faith. In determining whether a
15 public body acted in good faith, the court shall consider, among other factors,
16 whether the public body responded to a notice of an alleged violation of this
17 subchapter in a timely manner under subsection (b) of this section; or

18 (2) the public body cured the violation in accordance with subsection (b)
19 of this section.

20 Sec. 5. EFFECTIVE DATE

21 This act shall take effect on July 1, 2013.