

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Government Operations to which was referred House
3 Bill No. 497 entitled “An act relating to open meeting law” respectfully reports
4 that it has considered the same and recommends that the bill be amended by
5 striking out all after the enacting clause and inserting in lieu thereof the
6 following:

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

8 § 310. DEFINITIONS

9 As used in this subchapter:

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

13 (2) “Meeting” means a gathering of a quorum of the members of a
14 public body for the purpose of discussing the business of the public body or for
15 the purpose of taking action. “Meeting” shall not mean written
16 correspondence or an electronic communication, including e-mail, telephone,
17 or teleconferencing, between members of a public body for the purpose of
18 scheduling a meeting, organizing an agenda, or distributing materials to
19 discuss at a meeting, provided that such a written correspondence or such an
20 electronic communication that results in written or recorded information shall

1 be available for inspection and copying under the Public Records Act as set
2 forth in chapter 5, subchapter 3 of this title.

3 (3) “Public body” means any board, council₂ or commission of the ~~state~~
4 State or one or more of its political subdivisions, any board, council₂ or
5 commission of any agency, authority₂ or instrumentality of the ~~state~~ State or
6 one or more of its political subdivisions, or any committee of any of the
7 foregoing boards, councils₂ or commissions, except that “public body” does not
8 include councils or similar groups established by the ~~governor~~ Governor for
9 the sole purpose of advising the ~~governor~~ Governor with respect to policy.

10 (4) “Publicly announced” means that notice is given to an editor,
11 publisher₂ or news director of a newspaper or radio station serving the area of
12 the ~~state~~ State in which the public body has jurisdiction, and to any ~~editor,~~
13 ~~publisher₂ or news director~~ person who has requested under subdivision
14 312(c)(5) of this title to be notified of special meetings.

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

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

18 (B) a case in which the legal rights of one or more persons who are
19 granted party status are adjudicated, which is conducted in such a way that all
20 parties have opportunity to present evidence and to cross-examine witnesses

1 presented by other parties, which results in a written decision, and the result of
2 which is appealable by a party to a higher authority.

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

4 § 312. RIGHT TO ATTEND MEETINGS OF PUBLIC AGENCIES

5 (a)(1) All meetings of a public body are declared to be open to the public at
6 all times, except as provided in section 313 of this title. No resolution, rule,
7 regulation, appointment, or formal action shall be considered binding except as
8 taken or made at such open meeting, except as provided under ~~section~~
9 ~~313(a)(2)~~ subdivision 313(b)(1) of this title. ~~A meeting may be conducted by~~
10 ~~audio conference or other electronic means, as long as the provisions of this~~
11 ~~subchapter are met.~~ A meeting of a public body is subject to the public
12 accommodation requirements of 9 V.S.A. chapter 139. A public body shall
13 electronically record by audio tape, all public hearings held to provide a forum
14 for public comment on a proposed rule, pursuant to 3 V.S.A. § 840. The
15 public shall have access to copies of such ~~tapes~~ electronic recordings as
16 described in section 316 of this title.

17 (2) Conduct of meetings through electronic or other means.

18 (A) As long as the requirements of this subchapter are met:

19 (i) One or more of the members of a public body may attend a
20 regular, special, or emergency meeting by electronic or other means without
21 being physically present at the designated meeting location; or

1 (ii) The public body may meet by electronic or other means with
2 or without designating any physical meeting location.

3 (B) If one or more members attend a meeting by electronic or other
4 means, such members may fully participate in discussing the business of the
5 public body and voting to take an action, but any vote of the public body shall
6 be taken by roll call.

7 (C) Each member who attends a meeting without being physically
8 present at a designated meeting location, if any, shall:

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

10 (ii) be able to hear the conduct of the meeting and be heard
11 throughout the meeting.

12 (D) If a quorum or more of the members of a public body attend a
13 meeting without being physically present at a designated meeting location, if
14 any, the following additional requirements shall be met:

15 (i) At least 24 hours prior to the meeting, or as soon as practicable
16 prior to an emergency meeting, the public body shall publicly announce the
17 meeting, and a municipal public body shall post notice of the meeting in or
18 near the municipal clerk's office and in at least two other public places in the
19 municipality.

20 (ii) The public announcement and posted notice of the meeting
21 shall identify:

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

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

5 (3) Notwithstanding the requirements of subdivision (a)(2)(C) of this
6 section, a public body may for the purpose of drafting or editing documents
7 conduct a meeting exclusively using an electronic document-sharing platform,
8 provided that:

9 (A) the electronic document being drafted or edited is publicly
10 available and the public is able to review any proposed change to the document
11 and identify the person proposing the change; and

12 (B) notice of the meeting is announced and posted in accordance with
13 subdivision (a)(2)(D)(i) of this section. The announcement and posted notice
14 shall identify:

15 (i) the specific time frame in which the meeting will be held; and

16 (ii) the online location of the document.

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

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

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

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

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

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

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

17 (2) The time, place, and purpose of a special meeting subject to this
18 section shall be publicly announced at least 24 hours before the meeting.
19 Municipal public bodies shall post notices of special meetings in or near the
20 municipal clerk's office and in at least two other public places in the
21 municipality, at least 24 hours before the meeting. In addition, notice shall be

1 given, either orally or in writing, to each member of the public body at least
2 24 hours before the meeting, except that a member may waive notice of a
3 special meeting.

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

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

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

1 (d)(1) ~~The~~ At least 48 hours prior to a regular meeting, and at least 24
2 hours prior to a special meeting, a meeting agenda for a regular or special
3 meeting shall be:

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

6 (B) in the case of a municipal public body, posted in or near the
7 municipal office and in at least two other public places in the municipality; and

8 (C) made available to ~~the news media or concerned persons~~ a person
9 prior to the meeting upon specific request.

10 (2)(A) Any addition to or deletion from the agenda shall be made as the
11 first act of business at the meeting.

12 (B) Any other adjustment to the agenda may be made at any time
13 during the meeting.

14 (e) Nothing in this section or in section 313 of this title shall be construed
15 as extending to the ~~judicial branch~~ Judicial Branch of the ~~government~~
16 Government of Vermont or of any part of the same or to the ~~public service~~
17 ~~board~~ Public Service Board; nor shall it extend to the deliberations of any
18 public body in connection with a quasi-judicial proceeding; nor shall anything
19 in this section be construed to require the making public of any proceedings,
20 records, or acts which are specifically made confidential by the laws of the
21 United States of America or of this ~~state~~ 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 Parole Board from meeting at correctional facilities with attendance at the
17 meeting subject to rules regarding access and security established by the
18 superintendent of the 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 for actions relating to the securing of real estate
13 options under subdivision ~~(2)~~ (b)(1) of this ~~subsection~~ section. Minutes of an
14 executive session need not be taken, but if they are, shall not be made public
15 subject to subsection 312(b) of this title.

16 (b) A public body may not hold an executive session except to consider one
17 or more of the following:

18 ~~(1) Contracts, labor relations agreements with employees, arbitration,~~
19 ~~mediation, grievances, civil actions, or prosecutions by the state, where~~
20 ~~premature general public knowledge would clearly place the state,~~

1 ~~municipality, other public body, or person involved at a substantial~~
2 ~~disadvantage;~~

3 ~~(2)(1)~~ The negotiating or securing of real estate purchase or lease
4 options;

5 ~~(3)(2)~~ The appointment or employment or evaluation of a public officer
6 or employee, including discussion, interview, and evaluation of the merits of a
7 candidate for public office or employment, provided that a final decision to
8 hire or appoint a public officer or employee shall be made in an open meeting;

9 ~~(4)(3)~~ A disciplinary or dismissal action against a public officer or
10 employee; but nothing in this subsection shall be construed to impair the right
11 of such officer or employee to a public hearing if formal charges are brought;

12 ~~(5)(4)~~ A clear and imminent peril to the public safety;

13 ~~(6)(5)~~ ~~Discussion or consideration of records or documents excepted~~
14 Records exempt from the access to public records provisions of section ~~317~~
15 316 of this title. ~~Discussion or consideration of the excepted record or~~
16 document; provided, however, that discussion of the exempt record shall not
17 itself permit an extension of the executive session to the general subject to
18 which the record ~~or document~~ pertains;

19 ~~(7)(6)~~ The academic records or suspension or discipline of students;

1 ~~(8)~~(7) Testimony from a person in a parole proceeding conducted by the
2 Parole Board if public disclosure of the identity of the person could result in
3 physical or other harm to the person;

4 ~~(9)~~(8) Information relating to a pharmaceutical rebate or to supplemental
5 rebate agreements, which is protected from disclosure by federal law or the
6 terms and conditions required by the Centers for Medicare and Medicaid
7 Services as a condition of rebate authorization under the Medicaid program,
8 considered pursuant to 33 V.S.A. §§ 1998(f)(2) and 2002(c);

9 (9) Municipal or school security or emergency response measures, the
10 disclosure of which could jeopardize public safety;

11 (10) After making a specific finding that premature general public
12 knowledge would place the public body or a person involved at a substantial
13 disadvantage;

14 (A) Contracts;

15 (B) Labor relations agreements with employees;

16 (C) Arbitration or mediation;

17 (D) Grievances, other than tax grievances; or

18 (E) Professional legal advice in connection with pending or imminent
19 civil litigation or a prosecution, to which the public body is or may be a party.

20 ~~(b)~~(c) Attendance in executive session shall be limited to members of the
21 public body, and, in the discretion of the public body, its staff, clerical

1 assistants and legal counsel, and persons who are subjects of the discussion or
2 whose information is needed.

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

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

8 § 314. PENALTY AND ENFORCEMENT

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

16 (b)(1) ~~The attorney general~~ Prior to instituting an action under subsection
17 (c) of this section, the Attorney General or any person aggrieved by a violation
18 of the provisions of this subchapter shall provide the public body written notice
19 that alleges a specific violation of this subchapter and requests a specific cure
20 of such violation. The public body will not be liable for attorney's fees and

1 litigation costs under subsection (d) of this section if it cures in fact a violation
2 of this subchapter in accordance with the requirements of this subsection.

3 (2) Upon receipt of the written notice of alleged violation, the public
4 body shall respond publicly to the alleged violation within five business
5 days by:

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

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

10 (3) Failure of a public body to respond to a written notice of alleged
11 violation within five business days shall be treated as a denial of the violation
12 for purposes of enforcement of the requirements of this subchapter.

13 (4) Within 14 calendar days after a public body acknowledges a
14 violation under subdivision (2)(A) of this subsection, the public body shall
15 cure the violation at an open meeting by:

16 (A) either ratifying, or declaring as void, any action taken at or
17 resulting from a meeting in violation of this subchapter; and

18 (B) adopting specific measures that actually prevent future violations.

19 (c) Following expiration of the five-business-day response period of
20 subdivision (b)(2) of this section and, if applicable, of the additional
21 14-calendar-day cure period for public bodies acknowledging a violation, the

1 Attorney General or any person aggrieved by a violation of the provisions of
2 this subchapter may ~~apply to the superior court~~ bring an action in the Civil
3 Division of the Superior Court in the county in which the violation has taken
4 place for appropriate injunctive relief or for a declaratory judgment. An action
5 may be brought under this section no later than one year after the meeting at
6 which the alleged violation occurred or to which the alleged violation relates.

7 Except as to cases the ~~court~~ Court considers of greater importance, proceedings
8 before the ~~superior court~~ Civil Division of the Superior Court, as authorized by
9 this section and appeals therefrom, take precedence on the docket over all
10 cases and shall be assigned for hearing and trial or for argument at the earliest
11 practicable date and expedited in every way.

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

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

18 (B) the public body acted in good faith. In determining whether a
19 public body acted in good faith, the Court shall consider, among other factors,
20 whether the public body responded to a notice of an alleged violation of this
21 subchapter in a timely manner under subsection (b) of this section; or

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

3 Sec. 5. EFFECTIVE DATE

4 This act shall take effect on July 1, 2014.

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8 (Committee vote: _____)

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Representative

FOR THE COMMITTEE