

1 TO THE HONORABLE SENATE:

2 The Committee on Government Operations to which was referred House
3 Bill No. 497 entitled “An act relating to the open meeting law” respectfully
4 reports that it has considered the same and recommends that the Senate
5 propose to the House that the bill be amended by striking out all after the
6 enacting clause and inserting in lieu thereof the 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 ~~publisher 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) Participation in meetings through electronic or other means.

18 (A) As long as the requirements of this subchapter are met, one or
19 more of the members of a public body may attend a regular, special, or
20 emergency meeting by electronic or other means without being physically
21 present at a designated meeting location.

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

5 (C) Each member who attends a meeting without being physically
6 present at a designated meeting location shall:

7 (i) identify himself or herself when the meeting is convened; and
8 (ii) be able to hear the conduct of the meeting and be heard
9 throughout the meeting.

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

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

18 (ii) The public announcement and posted notice of the meeting
19 shall designate at least one physical location where a member of the public can
20 attend and participate in the meeting. At least one member of the public body,

1 or at least one staff or designee of the public body, shall be physically present
2 at each designated meeting location.

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

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

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

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

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

13 (2) Minutes of all public meetings shall be matters of public record,
14 shall be kept by the clerk or secretary of the public body, and shall be available
15 for inspection by any person and for purchase of copies at cost upon request
16 after five days from the date of any meeting. Meeting minutes shall be posted
17 no later than five days from the date of the meeting to a website, if one exists,
18 that the public body maintains or has designated as the official website of the
19 body.

20 (c)(1) The time and place of all regular meetings subject to this section
21 shall be clearly designated by statute, charter, regulation, ordinance, bylaw,

1 resolution, or other determining authority of the public body, and this
2 information shall be available to any person upon request. The time and place
3 of all public hearings and meetings scheduled by all Executive Branch State
4 agencies, departments, boards, or commissions shall be available to the public
5 as required under 3 V.S.A. § 2222(c).

6 (2) The time, place, and purpose of a special meeting subject to this
7 section shall be publicly announced at least 24 hours before the meeting.
8 Municipal public bodies shall post notices of special meetings in or near the
9 municipal clerk's office and in at least two other **designated** public places in
10 the municipality, at least 24 hours before the meeting. In addition, notice shall
11 be given, either orally or in writing, to each member of the public body at least
12 24 hours before the meeting, except that a member may waive notice of a
13 special meeting.

14 (3) Emergency meetings may be held without public announcement,
15 without posting of notices and without 24-hour notice to members, provided
16 some public notice thereof is given as soon as possible before any such
17 meeting. Emergency meetings may be held only when necessary to respond to
18 an unforeseen occurrence or condition requiring immediate attention by the
19 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 station~~
5 ~~or television station serving the area of the state in which the public body has~~
6 ~~jurisdiction~~ A person may request in writing that a public body notify the
7 ~~editor, publisher or news director~~ person of special meetings of the public
8 body. The request shall apply only to the calendar year in which it is made,
9 unless made in December, in which case it shall apply also to the following
10 year.

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

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

16 (B) in the case of a municipal public body, posted in or near the
17 municipal office and in at least two other **designated** public places in the
18 municipality.

19 (2) A meeting agenda shall be made available to the news media or
20 ~~concerned persons~~ a person prior to the meeting upon specific request.

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

3 (B) Any other adjustment to the agenda may be made at any time
4 during the 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~~ 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 Parole Board from meeting at correctional facilities with attendance at the
8 meeting subject to rules regarding access and security established by the
9 superintendent of the 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) of this subsection. Minutes of an executive
2 session need not be taken, but if they are, shall not be made public subject to
3 subsection 312(b) of this title. A public body may not hold an executive
4 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 after~~
7 ~~making a specific finding that premature general public knowledge would~~
8 ~~clearly place the state, municipality, other public body, or a person involved at~~
9 ~~a substantial disadvantage;~~

10 (A) contracts;

11 (B) labor relations agreements with employees;

12 (C) arbitration or mediation;

13 (D) grievances, other than tax grievances;

14 (E) pending **or probable** civil litigation or a prosecution, to which the
15 public body is or may be a party;

16 (F) confidential attorney-client communications made for the purpose
17 of providing professional legal services to the body;

18 (2) ~~The~~ the negotiating or securing of real estate purchase or lease
19 options;

1 (3) ~~The~~ the appointment or employment or evaluation of a public officer
2 or employee other than the appointment of a person to a public body or to any
3 elected office;

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

7 (5) ~~A~~ a clear and imminent peril to the public safety;

8 (6) ~~Discussion or consideration of records or documents excepted~~
9 records exempt from the access to public records provisions of section ~~317~~ 316
10 of this title. ~~Discussion or consideration of the excepted record or document;~~
11 provided, however, that discussion of the exempt record shall not itself permit
12 an extension of the executive session to the general subject to which the record
13 ~~or document~~ pertains;

14 (7) ~~The~~ the academic records or suspension or discipline of students;

15 (8) ~~Testimony~~ testimony from a person in a parole proceeding
16 conducted by the Parole Board if public disclosure of the identity of the person
17 could result in physical or other harm to the person;

18 (9) ~~Information~~ information relating to a pharmaceutical rebate or to
19 supplemental rebate agreements, which is protected from disclosure by federal
20 law or the terms and conditions required by the Centers for Medicare and

1 Medicaid Services as a condition of rebate authorization under the Medicaid
2 program, considered pursuant to 33 V.S.A. §§ 1998(f)(2) and 2002(c);

3 (10) municipal or school security or emergency response measures, the
4 disclosure of which could jeopardize public safety.

5 * * *

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

7 § 314. PENALTY AND ENFORCEMENT

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

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

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

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

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

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

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

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

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

17 (c) Following an acknowledgment or denial of a violation and, if
18 applicable, following expiration of the 14-calendar-day cure period for public
19 bodies acknowledging a violation, the Attorney General or any person
20 aggrieved by a violation of the provisions of this subchapter may ~~apply to the~~
21 ~~superior court~~ bring an action in the Civil Division of the Superior Court in the

1 county in which the violation has taken place for appropriate injunctive relief
2 or for a declaratory judgment. An action may be brought under this section no
3 later than one year after the meeting at which the alleged violation occurred or
4 to which the alleged violation relates. Except as to cases the ~~court~~ Court
5 considers of greater importance, proceedings before the ~~superior court~~ Civil
6 Division of the Superior Court, as authorized by this section and appeals
7 therefrom, take precedence on the docket over all cases and shall be assigned
8 for hearing and trial or for argument at the earliest practicable date and
9 expedited in every way.

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

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

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

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

1 Sec. 5. 24 V.S.A. § 1964 is amended to read:

2 § 1964. STRUCTURE OF THE COMMUNITY JUSTICE BOARDS;

3 CONFIDENTIALITY OF CERTAIN RESTORATIVE JUSTICE

4 MEETINGS

5 (a) Each community justice center:

6 (1) ~~Shall~~ shall have an advisory board comprised of at least 51 percent
7 citizen volunteers;

8 (2) ~~May~~ may use a variety of community-based restorative justice
9 approaches, including community restorative justice panels or boards, group
10 conferencing, or mediation; and

11 (3) ~~Shall~~ shall include programs to resolve disputes, address the needs of
12 victims, address the wrongdoing of the offender, and promote the rehabilitation
13 of youthful and adult offenders.

14 (b) Meetings of restorative justice panels and meetings to conduct
15 restorative justice group conferencing or mediation shall not be subject to the
16 Vermont Open Meeting Law, 1 V.S.A. chapter 5, subchapter 2.

17 Sec. 6. EFFECTIVE DATES

18 This act shall take effect on July 1, 2014. However, a person who violates
19 1 V.S.A. § 312(b)(2) as amended by this act (requirement to post minutes to
20 website, if any) shall not be subject to prosecution for such violation pursuant

1 to 1 V.S.A. § 314(a) in connection with any meeting that occurs before July 1,
2 2015.

3 (Committee vote: _____)

4 _____

5 Senator _____

6 FOR THE COMMITTEE