

1 S.189

2 Introduced by Senator White

3 Referred to Committee on

4 Date:

5 Subject: Government operations; Open Meeting Law

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

7 (1) update the Open Meeting Law's definition of meeting;

8 (2) clarify when a public body may enter into an executive session;

9 (3) allow members of a public body to participate in a meeting remotely

10 if certain requirements are met;

11 (4) amend provisions related to meeting agendas;

12 (5) require that persons aggrieved by an Open Meeting Law violation

13 give the public body an opportunity to cure the violation;

14 (6) require the award of attorney's fees and litigation costs to a

15 complainant who substantially prevails in a case alleging a violation of the

16 Open Meeting Law, unless the public body cured the violation or had a

17 reasonable basis in fact and law for its position and acted in good faith; and

18 (7) make other miscellaneous changes to the Open Meeting Law.

1 An act relating to the Open Meeting Law

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

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

4 § 310. DEFINITIONS

5 As used in this subchapter:

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

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

19 (3) "Public body" means any board, council, or commission of the ~~state~~
20 State or one or more of its political subdivisions, any board, council, or
21 commission of any agency, authority, or instrumentality of the ~~state~~ State or

1 one or more of its political subdivisions, or any committee of any of the
2 foregoing boards, councils, or commissions, except that “public body” does not
3 include councils or similar groups established by the ~~governor~~ Governor for
4 the sole purpose of advising the ~~governor~~ Governor with respect to policy.

5 (4) “Publicly announced” means that notice is given to an editor,
6 publisher, or news director of a newspaper or radio station serving the area of
7 the ~~state~~ State in which the public body has jurisdiction, and to any ~~editor,~~
8 ~~publisher or news director~~ person who has requested under ~~section~~ subdivision
9 312(c)(5) of this title to be notified of special meetings.

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

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

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

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

19 § 312. RIGHT TO ATTEND MEETINGS OF PUBLIC AGENCIES

20 (a)(1) All meetings of a public body are declared to be open to the public at
21 all times, except as provided in section 313 of this title. No resolution, rule,

1 regulation, appointment, or formal action shall be considered binding except as
2 taken or made at such open meeting, except as provided under ~~section~~
3 ~~313(a)(2)~~ subdivision 313(b)(1) of this title. ~~A meeting may be conducted by~~
4 ~~audio conference or other electronic means, as long as the provisions of this~~
5 ~~subchapter are met.~~ A meeting of a public body is subject to the public
6 accommodation requirements of 9 V.S.A. chapter 139. A public body shall
7 record ~~by audio tape~~, all public hearings held to provide a forum for public
8 comment on a proposed rule, pursuant to 3 V.S.A. § 840. The public shall
9 have access to copies of ~~such tapes~~ recordings as described in section 316 of
10 this title.

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

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

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

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

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

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

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

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

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

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

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

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

19 (b)(1) Minutes shall be taken of all meetings of public bodies. The minutes
20 shall cover all topics and motions that arise at the meeting and give a true

1 indication of the business of the meeting. Minutes shall include at least the
2 following minimal information:

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

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

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

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

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

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

20 (2) The time, place, and purpose of a special meeting subject to this
21 section shall be publicly announced at least 24 hours before the meeting.

1 Municipal public bodies shall post notices of special meetings in or near the
2 municipal clerk's office and in at least two other public places in the
3 municipality, at least 24 hours before the meeting. In addition, notice shall be
4 given, either orally or in writing, to each member of the public body at least
5 24 hours before the meeting, except that a member may waive notice of a
6 special meeting.

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

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

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

1 made, unless made in December, in which case it shall apply also to the
2 following year.

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

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

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

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

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

13 (e) Nothing in this section or in section 313 of this title shall be construed
14 as extending to the ~~judicial branch~~ Judicial Branch of the ~~government~~
15 Government of Vermont or of any part of the same or to the ~~public service~~
16 ~~board~~ Public Service Board; nor shall it extend to the deliberations of any
17 public body in connection with a quasi-judicial proceeding; nor shall anything
18 in this section be construed to require the making public of any proceedings,
19 records, or acts which are specifically made confidential by the laws of the
20 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 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 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. ~~A public body may not hold an~~
16 ~~executive 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 ~~(2) The negotiating or securing of~~ (1) to negotiate or secure real estate
4 purchase options;

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

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

14 ~~(5)(4) A to consider a~~ clear and imminent peril to the public safety;

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

20 ~~(7)(6) The~~ to consider academic records or suspension or discipline of
21 students;

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

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

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

12 (10) for one or more of the following purposes, where the public body
13 determines that premature general public knowledge would place the public
14 body or a person involved at a substantial disadvantage:

15 (A) to consider or negotiate contracts;

16 (B) to consider or negotiate labor relations agreements with
17 employees;

18 (C) to conduct arbitration or mediation;

19 (D) to hear grievances, other than tax grievances; or

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

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

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

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

10 § 314. PENALTY AND ENFORCEMENT

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

18 (b) ~~The attorney general~~ Prior to instituting an action under subsection (c)
19 of this section, the Attorney General or any person aggrieved by a violation of
20 the provisions of this subchapter shall provide the public body written notice
21 that alleges a specific violation of this subchapter and requests a specific cure

1 of such violation. The public body may cure the violation, subject to the
2 following:

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

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

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

4 (c) Following expiration of the five-business-day time period of
5 subdivision (b)(1) of this section and, if applicable, the additional
6 14-calendar-day cure period for public bodies acknowledging a violation under
7 subdivision (b)(1)(A) of this section, the Attorney General or any person
8 aggrieved by a violation of the provisions of this subchapter may apply to the
9 superior court Civil Division of the Superior Court in the county in which the
10 violation has taken place for appropriate injunctive relief or for a declaratory
11 judgment. Except as to cases the ~~court~~ Court considers of greater importance,
12 proceedings before the ~~superior court~~ Civil Division of the Superior Court, as
13 authorized by this section and appeals therefrom, take precedence on the
14 docket over all cases and shall be assigned for hearing and trial or for argument
15 at the earliest practicable date and expedited in every way.

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

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

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

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

7 Sec. 5. EFFECTIVE DATE

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