

S.114

Introduced by Senator White

Referred to Committee on Government Operations

Date: February 25, 2015

Subject: Government operations; Open Meeting Law

Statement of purpose of bill as introduced: This bill proposes to amend
provisions of the Open Meeting Law related to:

(1) voting at and notice of meetings at which members of a public body
participate electronically;

(2) the posting of meeting minutes; and

(3) criminal and civil enforcement of the law.

An act relating to the Open Meeting Law

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

~~Sec. 1. 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 subdivision
313(a)(2) of this title. A meeting of a public body is subject to the public~~

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

6 (2) Participation in meetings through electronic or other means.

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

11 (B) If one or more members attend a meeting by electronic or other
12 means, such members may fully participate in discussing the business of the
13 public body and voting to take an action, but any vote of the public body that is
14 not unanimous shall be taken by roll call.

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

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

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

4 ~~(i) At least 24 hours prior to the meeting, or as soon as practicable~~
5 ~~prior to an emergency meeting, the public body shall publicly announce the~~
6 ~~meeting, and a municipal public body shall post notice of the meeting in or~~
7 ~~near the municipal clerk's office and in at least two other designated public~~
8 ~~places in the municipality.~~

9 ~~(ii) The public announcement and posted notice of the meeting~~
10 ~~agenda required under subsection (d) of this section shall designate at least one~~
11 ~~physical location where a member of the public can attend and participate in~~
12 ~~the meeting. At least one member of the public body, or at least one staff or~~
13 ~~designee of the public body, shall be physically present at each designated~~
14 ~~meeting location.~~

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

19 (A) all members of the public body present;

20 (B) all other active participants in the meeting;

1 ~~(C) all motions, proposals, and resolutions made, offered, and~~
2 considered, and what disposition is made of same; and

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

5 (2) Minutes of all public meetings shall be matters of public record,
6 shall be kept by the clerk or secretary of the public body, and shall be available
7 for inspection by any person and for purchase of copies at cost upon request
8 after five days from the date of any meeting. Meeting minutes shall be posted
9 no later than ~~five~~ 10 days from the date of the meeting to a website, if one
10 exists, that the public body maintains or has designated as the official website
11 of the body. Minutes may be posted in draft form, and draft minutes may be
12 replaced with approved or corrected minutes. Except as authorized in this
13 subsection, posted minutes shall not be removed from the website sooner than
14 one year from the date of the meeting for which the minutes were taken.

15 * * *

16 (d)(1) At least 48 hours prior to a regular meeting, and at least 24 hours
17 prior to a special meeting, a meeting agenda 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; and

1 ~~(B) in the case of a municipal public body, posted in or near the~~
2 municipal office and in at least two other designated public places in the
3 municipality.

4 (2) A meeting agenda shall be made available to a person prior to the
5 meeting upon specific request.

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

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

10 * * *

11 Sec. 2. 1 V.S.A. § 314 is amended to read:

12 § 314. PENALTY AND ENFORCEMENT

13 (a) Criminal enforcement.

14 (1) A Except as provided in subdivision (2) of this subsection, a person
15 who is a member of a public body and who knowingly and intentionally
16 violates the provisions of this subchapter, a person who knowingly and
17 intentionally violates the provisions of this subchapter on behalf or at the
18 behest of a public body, or a person who knowingly and intentionally
19 participates in the wrongful exclusion of any person or persons from any
20 meeting for which provision is herein made, shall be guilty of a misdemeanor
21 and shall be fined not more than \$500.00.

~~(2) A person shall not be subject to prosecution under this subsection in connection with a meeting of a municipal public body, other than:~~

~~(A) the legislative body of a municipality as defined in 17 V.S.A. § 2103;~~

~~(B) a school board as defined in 16 V.S.A. § 11;~~

~~(C) a zoning board of adjustment, planning commission, or development review board.~~

~~(b) Precondition to civil enforcement.~~

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

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

~~(A) acknowledging the violation of this subchapter and stating an 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 (3) Failure of a public body to respond to a written notice of alleged
4 violation within seven ~~business~~ days shall be treated as a denial of the violation
5 for purposes of enforcement of the requirements of this subchapter.

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

9 (A) if applicable, either ratifying, or declaring as void, any action
10 taken at or resulting from a meeting in violation of this subchapter not noticed
11 in accordance with subsection 312(c) of this title or at which the public was
12 improperly excluded; and

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

14 (5) Acknowledgment of a violation under this subsection shall not of
15 itself subject a person to a criminal penalty under subsection (a) of this section.

16 (c) Civil enforcement. Following an acknowledgment or denial of a
17 violation and, if applicable, following expiration of the ~~14-calendar-day~~ 14-day
18 cure period for public bodies acknowledging a violation, the Attorney General
19 or any person aggrieved by a violation of the provisions of this subchapter may
20 bring an action in the Civil Division of the Superior Court in the county in
21 which the violation has taken place for appropriate injunctive relief or for a

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

8 (d) Mandatory attorney's fees; exceptions.

9 (1) This subsection shall not apply to municipal public bodies,
10 other than:

11 (A) the legislative body of a municipality;

12 (B) a school board as defined in 16 V.S.A. § 11;

13 (C) a zoning board of adjustment, planning commission, or
14 development review board.

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

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

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

6 ~~(2)(B) the The public body cured the violation in accordance with~~
7 subsection (b) of this section.

8 Sec. 3. 2014 Acts and Resolves No. 143, Sec. 6 is amended to read:

9 Sec. 6. EFFECTIVE DATES

10 This act shall take effect on July 1, 2014. However, a person who violates
11 1 V.S.A. § 312(b)(2) or 1 V.S.A. § 312(d)(1) as amended by this act
12 (requirement to post minutes to website, if any, and to post agenda) shall not
13 be subject to prosecution for such violation pursuant to 1 V.S.A. § 314(a) in
14 connection with any meeting that occurs before July 1, 2015.

15 Sec. 4. EFFECTIVE DATE

16 ~~This act shall take effect on passage.~~

Sec. 1. 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 subdivision 313(a)(2) of this title. A meeting of a public body is subject to the public accommodation requirements of 9 V.S.A. chapter 139. A public body shall electronically record all public 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 electronic recordings as described in section 316 of this title.

(2) Participation in meetings through electronic or other means.

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

(B) If one or more members attend a meeting by electronic or other means, such members may fully participate in discussing the business of the public body and voting to take an action, but any vote of the public body that is not unanimous shall be taken by roll call.

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

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

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

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

~~(i) At least 24 hours prior to the meeting, or as soon as practicable prior to an emergency 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 designated public places in the municipality.~~

~~(ii) The public announcement and posted notice of the meeting agenda required under subsection (d) of this section shall designate at least one physical location where a member of the public can attend and participate in the meeting. At least one member of the public body, or at least one staff or designee of the public body, shall be physically present at each designated meeting location.~~

(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 calendar days from the date of any meeting. Meeting minutes shall be posted no later than five calendar days from the date of the meeting to a website, if one exists, that the public body maintains or has designated as the official website of the body. Except for draft minutes that have been substituted with updated minutes, posted minutes shall not be removed from the website sooner than one year from the date of the meeting for which the minutes were taken.

** * **

(d)(1) At least 48 hours prior to a regular meeting, and at least 24 hours prior to a special meeting, a meeting agenda shall be:

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

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

(2) A meeting agenda shall be made available to a person prior to the meeting upon specific request.

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

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

** * **

Sec. 2. 1 V.S.A. § 314(b) is amended to read:

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

(2) Upon receipt of the written notice of alleged violation, the public body shall respond publicly to the alleged violation within ~~seven business~~ 10 calendar days by:

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

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

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

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

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

(i) a meeting that was not noticed in accordance with subsection 312(c) of this title; or

(ii) a meeting that a person or the public was wrongfully excluded from attending; or

(iii) an executive session or portion thereof not authorized under subdivisions 313(a)(1)–(10) of this title; and

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

Sec. 3. EFFECTIVE DATE; APPLICATION OF CRIMINAL PENALTY

(a) This act shall take effect on passage.

(b) A person shall not be subject to prosecution pursuant to 1 V.S.A. § 314(a) for a violation of 1 V.S.A. § 312(d)(1)(A) (requirement to post agenda to website, if any) in connection with any meeting that occurred before July 1, 2015.