OVERVIEW OF VERMONT'S OPEN MEETING LAW
Act 143 (H.497) Changes Are Shown in Red

I. What Bodies Are Subject to the OML?

- The Vermont Open Meeting Law (OML) (1 V.S.A. §§ 310–314) applies to "public bodies," which are defined as boards, councils, or commissions of the State or its political subdivisions, or of any agency, authority, or instrumentality of the State or its political subdivisions, including committees of these bodies. § 310(3).
- The term "public body" does not extend to councils (or similar groups) established by the Governor for the sole purpose of advising the Governor with respect to policy. § 310(3).
- The OML does not extend to the judicial branch or to the Public Service Board; to the deliberations of a public body in connection with quasi-judicial proceedings; or to proceedings specifically made confidential under State or federal law. § 312(e).

II. What Constitutes a "Meeting" Under the OML?

- The OML applies to a "meeting" of a public body, which is defined as a "gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action." § 310(2). *Act 143 specified that the term "meeting" does not include correspondence or communications for the purpose of scheduling a meeting, organizing an agenda, or distributing materials to discuss at a meeting, but that such correspondence or communications, if recorded, are public.*
- The OML does not apply to site inspections to assess damage or to make tax assessments or abatements; to clerical work; to work assignments; or to routine day-to-day administrative matters that do not require action by the public body, as long as no money is appropriated, expended, or encumbered. § 312(g).

III. What Are the Requirements of the OML?

A. General Rule, Public Accommodation

- Meetings of a public body must be open to the public, unless authorized to be closed under the provisions governing executive sessions. § 312(a)(1).
- *Act 143 clarified that a meeting of a public body is subject to the public accommodation requirements of 9 V.S.A. chapter 139. § 312(a)(1).*

B. Participation Through Electronic Means

- Prior to Act 143, the OML addressed electronic participation by stating, "A meeting may be conducted by audio conference or other electronic means" as long as the provisions of the OML are met.
- *Act 143 addresses the topic of electronic participation in greater detail. It specified that one or more members may participate in a meeting electronically without being physically present. It clarified that members participating remotely may vote to take an action (but that any vote must be taken by roll call). Members attending a meeting*

remotely must identify themselves when the meeting is convened and be able to hear the conduct of the meeting and be heard throughout the meeting. § 312(a)(2).

- *If a quorum or more of members will be attending remotely, the meeting must be publicly announced (and in the case of municipalities, notice must be posted), and the announcement and notice must designate a physical location where the public can attend and participate. At least one member of the public body or a designee of the body must be physically present at each designated meeting location. § 312(a)(2)(D).*

C. Meeting Minutes

- Except for executive sessions, minutes must be taken of meetings of public bodies. The minutes must "cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting." § 312(b). At a minimum, they must identify:
  - the members present and other active meeting participants;
  - all motions, proposals, and resolutions made and considered, and their dispositions; and
  - the results of any votes taken, with a record of individual votes if a roll call is taken.
- Minutes are public records; must be available for public inspection after five days from the meeting; *and under Act 143, must be posted to a website of the public body, if one exists, no later than five days from the date of the meeting*. § 312(b).

D. Notice of Meetings

1. Regular meetings. A public body must designate the time and place of regular meetings by statute, charter, regulation, ordinance, bylaw, resolution, or other determining authority. This information must be made available upon request. § 312(c)(1).

2. Special meetings. A public body holding a special meeting must, at least 24 hours before the meeting, publicly announce the time, place, and purpose of the meeting by notifying the body members, an area newspaper or radio station, and any other *person* who has specifically requested notification and, in the case of municipal public bodies, by posting notice of the meeting in or near the clerk's office and in two other *designated* public places in the municipality. § 312(c)(2); § 310(4); § 312(c)(5).

3. Emergency meetings. An emergency meeting may be held without public announcement as long as some public notice is given as soon as possible before the meeting. § 312(c)(3).

Any adjourned meeting shall be considered a new meeting unless its time and place is announced before the meeting adjourns.

E. Meeting Agendas and Changes Thereto

- *Act 143 specifies that an agenda for a regular meeting must be posted on the public body's website, if one exists, at least 48 hours in advance, and that an agenda for a special meeting must be so posted at least 24 hours in advance. In the case of municipal bodies, agendas must likewise be posted in or near the municipal office and in at least two other designated places in the municipality. § 312(d)(1).*

- An agenda for a regular or special meeting must be made available "prior to the meeting upon specific request." § 312(d)*(2).*
- *Under Act 143, any addition to or deletion from an agenda must be made as the first act of business at the meeting; other adjustments may be made at any time during the meeting. § 312(d)(3).*

F. Public's Right to Comment

At an open meeting, the public must be given a reasonable opportunity to comment on matters considered by the public body, subject to reasonable rules set by the chair. § 312(h).

G. Rules Governing Executive Sessions

- A public body may only enter into executive session—*i.e.* exclude the public from a meeting—upon a majority vote if it is a municipal body, or upon a two-thirds vote if it is a State body, on a motion made during an open meeting that indicates the reason for entering into executive session. § 313(a). The only permissible reasons for going into executive session are to consider one or more of the following:

  (1) *after making a specific finding that* premature general public knowledge would clearly place the state, municipality, other public body, or person involved at a substantial disadvantage: contracts; labor relations agreements with employees; arbitration or mediation; grievances, *other than tax grievances*; *pending or probable* civil *litigation* or a prosecution, *to which the public body is or may be a party; confidential attorney-client communications made for the purpose of providing professional legal services to the body;*
  (2) the negotiating or securing of real estate purchase *or lease* options;
  (3) the appointment or employment or evaluation of a public officer or employee, *provided that the public body shall make a final decision to hire or appoint a public officer or employee in an open meeting and shall explain the reasons for its final decision during the open meeting*;
  (4) a disciplinary or dismissal action against a public officer or employee;
  (5) a clear and imminent peril to the public safety;
  (6) records exempt from the Public Records Act;[1]
  (7) the academic records or suspension or discipline of students;
  (8) testimony from a person in a parole proceeding conducted by the Parole Board if public disclosure of the identity of the person could result in physical or other harm to the person;
  (9) information relating to a pharmaceutical rebate or to supplemental rebate agreements;
  (10) *municipal or school security or emergency response measures, the disclosure of which could jeopardize public safety*.

- No formal or binding action may be made in executive session except to secure real estate options. § 313(a).

[1] Consideration of an exempt record does not itself permit an extension of the executive session to the general subject to which the record pertains. § 313(a)(6).

IV. Effect of an OML Violation; Enforcement

- Except for real estate options, no resolution, rule, appointment, or formal action taken by a public body shall be considered binding unless taken or made at an open meeting. § 312(a). In *Valley Realty & Dev't, Inc. v. Town of Hartford*,[2] the Vermont Supreme Court held that "§ 312(a) provides only that actions taken outside of an open meeting, with the one exception provided by the language, are ineffective unless ratified in an open meeting. Once so ratified, however, such actions are effective and binding on the public body."
- A member of a public body who knowingly and intentionally violates the Open Meeting Law; *a person who knowingly and intentionally violates the Open Meeting Law on behalf or at the behest of a public body*; and a person who knowingly and intentionally participates in the wrongful exclusion from an open meeting "shall be guilty of a misdemeanor and shall be fined not more than $500.00." § 314(a).
- The Attorney General, and aggrieved private persons, may seek redress of an Open Meeting Law violation by bringing an action in Superior Court for injunctive relief or a declaratory judgment. § 314*(c). Prior to filing suit in Superior Court, complainants must provide the public body written notice alleging a specific violation and requesting a specific cure, and wait for the public body's response (and, if applicable, a cure period) to elapse. § 314(b).*
- *The public body has 7 business days to respond to the notice of violation, and 14 calendar days from a response acknowledging a violation to cure a violation. A public body is not subject to mandatory attorney's fees and litigation costs if it cures in fact the violation in accordance with § 314(b).*
- *A suit to enforce an Open Meeting Law violation must be brought no later than one year after the meeting to which the alleged violation relates. § 314(c).*
- *The Court must assess reasonable attorney's fees and litigation costs against the public body if the complainant substantially prevails, <u>unless</u> the Court finds that the public body had a reasonable basis in fact and law for its position and acted in good faith, or the public body cured the violation in accordance with § 314(b). § 314(d).*

[2] 165 Vt. 463 (1996).