

1 Introduced by Committee on Government Operations

2 Date:

3 Subject: Government operations; Open Meeting Law

4 Statement of purpose of bill as introduced: This bill proposes to amend

5 provisions of the Open Meeting Law related to:

6 (1) voting at and notice of meetings at which members of a public body

7 participate electronically;

8 (2) the posting of meeting minutes; and

9 (3) criminal and civil enforcement of the law.

10 An act relating to the Open Meeting Law

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

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

13 § 312. RIGHT TO ATTEND MEETINGS OF PUBLIC AGENCIES

14 (a)(1) All meetings of a public body are declared to be open to the public at

15 all times, except as provided in section 313 of this title. No resolution, rule,

16 regulation, appointment, or formal action shall be considered binding except as

17 taken or made at such open meeting, except as provided under subdivision

18 313(a)(2) of this title. A meeting of a public body is subject to the public

19 accommodation requirements of 9 V.S.A. chapter 139. A public body shall

20 electronically record all public hearings held to provide a forum for public

1 comment on a proposed rule, pursuant to 3 V.S.A. § 840. The public shall
2 have access to copies of such electronic recordings as described in section 316
3 of this title.

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

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

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

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

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

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

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

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

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

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

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

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

18 (C) all motions, proposals, and resolutions made, offered, and
19 considered, and what disposition is made of same; and

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

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

11 * * *

12 (d)(1) At least 48 hours prior to a regular meeting, and at least 24 hours
13 prior to a special meeting, a meeting agenda 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 a person prior to the
20 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 * * *

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

7 § 314. PENALTY AND ENFORCEMENT

8 (a) Criminal enforcement.

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

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

19 (A) the legislative body of a municipality as defined in 17 V.S.A.

20 § 2103;

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

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

3 (b) Precondition to civil enforcement.

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

11 (2) Upon receipt of the written notice of alleged violation, the public
12 body shall respond publicly to the alleged violation within ~~seven business~~ 30
13 days by:

14 (A) acknowledging the violation of this subchapter and stating an
15 intent to cure the violation within ~~14 calendar~~ 30 days; or

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

18 (3) Failure of a public body to respond to a written notice of alleged
19 violation within ~~seven business~~ 30 days shall be treated as a denial of the
20 violation for purposes of enforcement of the requirements of this subchapter.

1 (4) Within ~~14 calendar~~ 30 days after a public body acknowledges a
2 violation under subdivision (2)(A) of this subsection, the public body shall
3 cure the violation at an open meeting by:

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

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

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

11 (c) Civil enforcement. Following an acknowledgment or denial of a
12 violation and, if applicable, following expiration of the ~~14 calendar day~~ 30-day
13 cure period for public bodies acknowledging a violation, the Attorney General
14 or any person aggrieved by a violation of the provisions of this subchapter may
15 bring an action in the Civil Division of the Superior Court in the county in
16 which the violation has taken place for appropriate injunctive relief or for a
17 declaratory judgment. An action may be brought under this section no later
18 than one year after the meeting at which the alleged violation occurred or to
19 which the alleged violation relates. Except as to cases the Court considers of
20 greater importance, proceedings before the Civil Division of the Superior
21 Court, as authorized by this section and appeals therefrom, take precedence on

1 the docket over all cases and shall be assigned for hearing and trial or for
2 argument at the earliest practicable date and expedited in every way.

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

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

6 (A) the legislative body of a municipality;

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

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

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

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

16 ~~(B)~~(ii) 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)(B)~~ the The public body cured the violation in accordance with
21 subsection (b) of this section.

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

2 Sec. 6. EFFECTIVE DATES

3 This act shall take effect on July 1, 2014. However, a person who violates
4 1 V.S.A. § 312(b)(2) or 1 V.S.A. § 312(d)(1) as amended by this act
5 (requirement to post minutes to website, if any, and to post agenda) shall not
6 be subject to prosecution for such violation pursuant to 1 V.S.A. § 314(a) in
7 connection with any meeting that occurs before July 1, 2015.

8 Sec. 4. EFFECTIVE DATE

9 This act shall take effect on passage.