

1 H.

2 Introduced by

3 Referred to Committee on

4 Date:

5 Subject: Government Operations, open meetings

6 Statement of purpose: The bill proposes to:

7 (1) limit the requirement of conducting all votes taken by roll call when one or more  
8 members of a public body is participating via electronic means to votes which are not  
9 unanimous;

10 (2) require the posting of minutes to a website no later than ten business days from the  
11 date of the meeting;

12 (3) limit the application of the penalty and enforcement at the local level to the  
13 legislative body or any other boards, councils or commissions of political subdivisions  
14 required to be subject to the provisions of this subchapter by a vote of the town or a duly-  
15 approved municipal charter provision;

16 (4) delay the imposition of criminal prosecution and the assessment of attorney's  
17 fees and other litigation costs until July 1, 2015;

18 (5) require the Secretary of State to provide and maintain a website and staff to post  
19 all meeting agenda and minutes of municipal government public bodies; and

1 (6) Have the state provide sustainable funding for an educational program to  
2 acquaint municipal officials with the Open Meeting Law requirements.

3 An act relating to

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

5 Sec. 1. 1 V.S.A. § 312(a)(2)(B) is amended to read:

6 **§ 312. Right to attend meetings of public agencies**

7 \*\*\*

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

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

14 Sec. 2. 1 V.S.A. § 312(a)(2)(D) is amended to read:

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

18 ~~(i) At least 24 hours prior to the meeting, or as soon as practicable prior to an~~  
19 ~~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 to be posted under subsection (d)(1) of this section and made available upon request under (d)(2) 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.

Sec. ~~23~~. 1 V.S.A. § 312 (b)(2) is amended to read:

**§ 312. Right to attend meetings of public agencies**

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(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 days from the date of any meeting. Meeting minutes shall be posted no later than ~~five~~ ten business 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.

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Section 3. 1 V.S.A. § 314 is amended to read:

**§ 314. Penalty and enforcement**

**Comment [SEJ1]:** Would like to limit at the local level to those municipalities where the legislative body or voters so direct them to be. Would also like to have the same caveat inserted into 312(d)(1)(A) for the agenda. Can I work with Helena on language that would accomplish that?

1 (a) A person who is a member of a public body of the state, the legislative body of a  
2 political subdivision as defined by 17 V.S.A. § 2103(17) or any other board, council or  
3 commission of a political subdivision of the state required to be subject to the provisions of  
4 this section by a vote of the town or a duly-approved municipal charter provision and who  
5 knowingly and intentionally violates the provisions of this subchapter, a person who  
6 knowingly and intentionally violates the provisions of this subchapter on behalf or at the  
7 behest of a public body as limited in this section, or a person who knowingly and  
8 intentionally participates in the wrongful exclusion of any person or persons from any  
9 meeting for which provision is herein made, shall be guilty of a misdemeanor and shall be  
10 fined not more than \$500.00.

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

17 (2) Upon receipt of the written notice of alleged violation, the public body shall  
18 respond publicly to the alleged violation within seven business daysno later than its next  
19 regular meeting by:

1 (A) acknowledging the alleged violation of this subchapter and stating an intent  
2 to cure the violation ~~within 14 calendar days~~no later than its next regular meeting; or

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

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

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

11 (A) either ratifying, or declaring as void, any action taken ~~at or resulting from a~~  
12 ~~meeting in violation of this subchapter~~outside an open meeting; and

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

14 (C) The acknowledgement of an alleged violation for purposes of this subsection  
15 shall not constitute grounds for criminal prosecution under subsection (a) of this section.

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

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

7 (d) The Court shall assess against a public body of the state, the legislative body of a  
8 political subdivision as defined by 17 V.S.A. § 2103(17) or any other board, council or  
9 commission of a political subdivision of the state required to be subject to the provisions of  
10 this section by a vote of the town or a duly-approved municipal charter provision found to  
11 have violated the requirements of this subchapter reasonable attorney's fees and other  
12 litigation 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 position; and

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

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

1 Sec. 4. Section 6 of Act 143 of the 2013 Adjourned Session is hereby amended to read:

2 Sec. 6. EFFECTIVE DATES

3 A person who violates 1V.S.A. §312 (d)(1)(A) or §312(b)(2) as amended by ~~this act~~ Act  
4 143 of the 2013 Adjourned Session (requirement to post agendas and minutes to a website;  
5 ~~if any~~) shall not be subject to prosecution for such violation pursuant to 1 V.S.A. §314(a)  
6 in connection with any meeting that occurs before July 1, 2015. Any public body found to  
7 have violated the requirements of this subchapter as amended by Act 143 of the 2013  
8 Adjourned Session shall not be subject to the assessment of attorney's fees or other  
9 litigation costs pursuant to 1 V.S.A. §314(d) in connection with any meeting that occurs  
10 before July 1, 2015.

11 Sec. 4. 1 V.S.A. §118 is added to read:

12 **§118 Assistance to Local Governments for Open Meeting and Public Records Law**

13 **Compliance**

14 (a) The Secretary of State shall annually make available to all county, municipality, and  
15 school district officials an education program. The program shall provide instruction in the  
16 requirements of the Open Meeting and Access to Public Records Laws, recommendations  
17 for compliance and other topics designed to assist the officials in performing the statutory  
18 duties of their offices under such laws. The secretary shall consult with the Vermont  
19 School Boards Association and the Vermont League of Cities and Towns in the  
20 development of the education program.

1 (b) On or before September 1, 2015, the Secretary of State shall make a portion of his or  
2 her official state website available to political subdivisions for the purpose of complying  
3 with the requirements of 1V.S.A. §312 (d)(1)(A) and §312(b)(2). The Secretary of State  
4 shall also provide staff assistance to act on behalf or at the behest of a public body to meet  
5 the posting requirements of such subsections.

DRAFT