



**STATE OF VERMONT**  
OFFICE OF LEGISLATIVE COUNCIL

**MEMORANDUM**

To: Members, Joint Information Technology Oversight Committee  
From: Rebecca Wasserman and Maria Royle  
Date: October 29, 2018  
Subject: Open Meeting Law and Executive Session

In advance of the Joint Information Technology Oversight Committee (the Committee) meeting on November 1, 2018, you have asked us to provide you with some information on the applicability of the Open Meeting Law (OML), 1 V.S.A. §§ 310–314, to the Committee and the procedure for entering into executive session in relation to a potential discussion on data security and network redundancy issues.

**Applicability of the OML to the Committee**

The OML requires that, subject to certain exceptions, meetings of public bodies be open to the public. The OML defines “public body” in relevant part as:

“any board, council, or commission of the State or one or more of its political subdivisions, any board, council, or commission of any agency, authority, or instrumentality of the State or one or more of its political subdivisions, or any committee of any of the foregoing boards, councils, or commissions...”

The position of the Office of Legislative Council (Office) is that the OML does **not** apply to committees, councils, working groups, etc., that are composed entirely of legislators. Although the General Assembly and its bodies are not subject to the OML, committees often like to follow the provisions of the OML or legislative rules when entering into executive session and excluding the public from a meeting.

**Authority of the Committee to Enter into Executive Session**

In the case of the Committee, the Joint Rules do not address the authority of a joint committee to enter into an executive session. However, in the absence of any Joint Rules, both the House and Senate Rules are instructive in determining authority in this scenario. If the chair of the Committee is a Senator, the Senate Rules will control. If the chair is a Representative, the House Rules apply.<sup>1</sup>

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<sup>1</sup> The House Rules also do not address the authority of a House committee entering into an executive session. Based on a conversation with the House Clerk on October 18, 2019, when a House member is the Chair of the Committee, the rules will default to the Senate Rules since the Vice Chair of the Committee will be a Senator.

The current Chair of the Committee is a member of the Senate so the Senate Rules would apply here. Senate Rule 96 permits a committee to enter into executive session upon a two-thirds vote of members of the committee who are physically present.

Senate Rule 96 limits the matters that a committee may consider in executive session. Based on the potential discussions relating to data security and network redundancy (including a discussion of related State network contracts), the grounds most likely to be relevant to the Committee are: (1) a discussion of contracts, where premature knowledge would clearly place the State at a substantial disadvantage, and (2) matters that constitute a clear and imminent peril to the public.

### **Procedure for Entering into Executive Session**

When entering into executive session pursuant to Senate Rule 96, the Committee should take the following steps:

1. A motion should be made while the meeting is open to the public, stating the nature of the business of the proposed executive session.
  - Suggested text of motion for network contracts: “I move that the committee enter into executive session pursuant to Senate Rule 96 to discuss provisions of State IT contracts relating to network redundancy.”
  - Suggested text of motion for data security: “I move that the committee enter into executive session pursuant Senate Rule 96 to discuss the State’s measures to protect data security and related issues.”
2. A quorum of the committee must be physically present, and a 2/3 majority of those present is required in order for the motion to carry.
3. The vote on the motion should be taken while the meeting is open to the public, and the results of the vote recorded.
4. If the Committee votes to enter into executive session:
  - We recommend that the recording of the meeting be stopped during the executive session.
  - The scope of the discussion during the executive session should be restricted to network redundancy or data security, whichever is the reason for entering into executive session. The discussion should not stray into other matters.
  - Any formal action taken shall be by roll call vote.

Please contact the Rebecca Wasserman or Maria Royle if you have any general questions about the Open Meeting Law.