

1 Introduced by Committee on Government Operations

2 Date:

3 Subject: Open Meeting Law; Public Records Act

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

5 (1) add a definition to the Open Meeting Law and clarify what activities
6 do not constitute a meeting under the Open Meeting Law;

7 (2) establish when a series of less-than-a-quorum communications to or
8 among members of a public body is prohibited under the Open Meeting Law;

9 (3) amend provisions related to fees that a public agency may charge in
10 connection with responding to a Public Records Act request;

11 (4) clarify and update provisions related to time periods for responding
12 to a Public Records Act request and specify an obligation of records officers of
13 State agencies and departments to be accountable for the processing of requests
14 for public records; and

15 (5) codify a provision of existing law that requires the Secretary of
16 Administration to maintain a Public Records Request System cataloguing
17 information about Public Records Act requests received by State public
18 agencies, require the Secretary to post System information on the Agency of
19 Administration's website, and require Executive Branch public agencies to
20 post in a conspicuous location on their websites a link to the location on the
21 Agency of Administration's website where System information is maintained.

1 An act relating to the Open Meeting Law and the Public Records Act

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

3 * * * Open Meeting Law * * *

4 Sec. 1. 1 V.S.A. § 310 is amended to read:

5 § 310. DEFINITIONS

6 As used in this subchapter:

7 (1) “Business of the public body” means the public body’s
8 governmental functions, including any matter over which the public body has
9 supervision, control, jurisdiction, or advisory power.

10 (2) “Deliberations” means weighing, examining, and discussing the
11 reasons for and against an act or decision, but expressly excludes the taking of
12 evidence and the arguments of parties.

13 ~~(2)~~(3)(A) “Meeting” means a gathering of a quorum of the members of a
14 public body for the purpose of discussing the business of the public body or for
15 the purpose of taking action.

16 (B) “Meeting” shall not mean written correspondence or an electronic
17 communication, including e-mail, telephone, or teleconferencing, between
18 members of a public body for the purpose of scheduling a meeting, organizing
19 an agenda, or distributing materials to discuss at a meeting, provided that such
20 a written correspondence or such an electronic communication that results in

1 written or recorded information shall be available for inspection and copying
2 under the Public Records Act as set forth in chapter 5, subchapter 3 of this title.

3 (C) “Meeting” shall not mean occasions when a quorum of a public
4 body attends social gatherings, conventions, conferences, training programs,
5 press conferences, media events, or otherwise gathers as long as the public
6 body does not discuss specific business of the public body that, at the time of
7 the exchange, the participating members expect to be business of the public
8 body at a later time.

9 (D) “Meeting” shall not mean a gathering of a quorum of a public body
10 at a duly warned meeting of another public body as long as the attending
11 public body does not take action on its business.

12 ~~(3)~~(4) “Public body” means any board, council, or commission of the
13 State or one or more of its political subdivisions, any board, council, or
14 commission of any agency, authority, or instrumentality of the State or one or
15 more of its political subdivisions, or any committee of any of the foregoing
16 boards, councils, or commissions, except that “public body” does not include
17 councils or similar groups established by the Governor for the sole purpose of
18 advising the Governor with respect to policy.

19 ~~(4)~~(5) “Publicly announced” means that notice is given to an editor,
20 publisher, or news director of a newspaper or radio station serving the area of
21 the State in which the public body has jurisdiction, and to any person who has

1 requested under subdivision 312(c)(5) of this title to be notified of special
2 meetings.

3 ~~(5)~~(6) “Quasi-judicial proceeding” means a proceeding which is:

4 (A) a contested case under the Vermont Administrative Procedure
5 Act; or

6 (B) a case in which the legal rights of one or more persons who are
7 granted party status are adjudicated, which is conducted in such a way that all
8 parties have opportunity to present evidence and to cross-examine witnesses
9 presented by other parties, which results in a written decision, and the result of
10 which is appealable by a party to a higher authority.

11 Sec. 2. 1 V.S.A. § 312(a)(3) is added to read:

12 (3) A quorum of the members of a public body shall not use a series of
13 less-than-a-quorum communications of any kind, directly or through
14 intermediaries, intended by any of the members to reach agreement or take
15 action on the business of the public body.

16 * * * Public Records Act * * *

17 Sec. 3. 1 V.S.A. § 315 is amended to read:

18 § 315. STATEMENT OF POLICY; SHORT TITLE

19 (a) It is the policy of this subchapter to provide for free and open
20 examination of records consistent with Chapter I, Article 6 of the Vermont
21 Constitution. Officers of government are trustees and servants of the people

1 and it is in the public interest to enable any person to review and criticize their
2 decisions even though such examination may cause inconvenience or
3 embarrassment. All people, however, have a right to privacy in their personal
4 and economic pursuits, which ought to be protected unless specific information
5 is needed to review the action of a governmental officer. Consistent with these
6 principles, the General Assembly hereby declares that certain public records
7 shall be made available to any person as hereinafter provided. To that end, the
8 provisions of this subchapter shall be liberally construed to implement this
9 policy, and the burden of proof shall be on the public agency to sustain its
10 action.

11 (b) The General Assembly finds that public records are essential to the
12 administration of State and local government. Public records contain
13 information that allows government programs to function, provides officials
14 with a basis for making decisions, and ensures continuity with past operations.
15 Public records document the legal responsibilities of government, help protect
16 the rights of citizens, and provide citizens a means of monitoring government
17 programs and measuring the performance of public officials. Public records
18 provide documentation for the functioning of government and for the
19 retrospective analysis of the development of Vermont government and the
20 impact of programs on citizens.

1 (c) This subchapter may be known and cited as the Public Records Act or
2 the PRA.

3 Sec. 4. 1 V.S.A. § 316 is amended to read:

4 § 316. ACCESS TO PUBLIC RECORDS AND DOCUMENTS; CHARGES;

5 FORMAT OF RECORDS

6 * * *

7 (b) Unless otherwise provided by law, a public agency shall not charge or
8 collect a fee in response to a request to inspect a public record.

9 (c) If an individual requests a copy of a public record, a public agency may
10 charge and collect a fee as follows:

11 (1) Actual cost of providing copies. If copying equipment maintained
12 for use by a public agency is used by the agency to copy the public record or
13 document requested, the agency may charge and collect from the person
14 requesting the copy the actual cost of providing the copy. The agency may
15 also charge and collect from the person making the request, the costs
16 associated with mailing or transmitting the record by facsimile or other
17 electronic means. ~~Nothing in this section shall exempt any person from paying~~
18 ~~fees otherwise established by law for obtaining copies of public records or~~
19 ~~documents, but if such fee is established for the copy, no additional costs or~~
20 ~~fees shall be charged.~~

21 ~~(e)(2) Staff time.~~

1 (A) Unless otherwise provided by law, in the following instances an
2 agency may also charge and collect the cost of staff time associated with
3 complying with a request **for a copy of** a public record:

4 (1)(i) the time directly involved in complying with the request that
5 exceeds 30 minutes;

6 (2)(ii) if the agency agrees to create a public record; or

7 (3)(iii) if the agency agrees to provide the public record in a nonstandard
8 format ~~and~~, the time directly involved in complying with the request that
9 exceeds 30 minutes.

10 (B) The agency may require that requests subject to staff time
11 charges under this ~~subsection~~ subdivision (2) be made in writing and that all
12 charges be paid, in whole or in part, prior to delivery of the copies. Upon
13 request, the agency shall provide an estimate of the charge.

14 (3) Fees otherwise provided by law. Nothing in this section shall
15 exempt any person from paying fees otherwise established by law for obtaining
16 copies of public records or documents, but if such fee is established for the
17 copy, no additional costs or fees shall be charged.

18 * * *

19 **Sec. 5. LEGISLATIVE INTENT**

20 In rearranging the text of existing law in 1 V.S.A. § 318(b)-(c) within Sec. 6
21 of this act, the General Assembly intends to make the text more organized and

1 clear, and does not intend to effect any substantive changes through the
2 rearrangement of existing text.

3 Sec. 6. 1 V.S.A. § 318 is amended to read:

4 § 318. PROCEDURE

5 (a)(1) As used in this section, “promptly” means immediately, with little or
6 no delay, and, unless otherwise provided in this section, not more than three
7 business days:

8 (A) from receipt of a request under this subchapter; or

9 (B) in the case of a reversal on appeal by a head of the agency
10 pursuant to subsection (c) of this section, from the date of the determination on
11 appeal.

12 (2) A custodian or head of the agency who fails to comply with the
13 applicable time limit provisions of this section shall be deemed to have denied
14 the request or the appeal upon the expiration of the time limit.

15 (b) Upon request, the custodian of a public record shall promptly produce
16 the record for inspection or a copy of the record, except that:

17 (1) If the record is in active use or in storage and therefore not available
18 for use at the time the person asks to examine it, the custodian shall ~~so~~
19 promptly certify this fact in writing to the applicant and, in the certification, set
20 a date and hour within one calendar week of the request when the record will
21 be available ~~for examination.~~

1 (2) If the custodian considers the record to be exempt from inspection
2 and copying under the provisions of this subchapter, the custodian shall
3 promptly so certify in writing. ~~Such certification shall identify the records~~
4 ~~withheld and the basis for the denial. A record shall be produced for~~
5 ~~inspection or a certification shall be made that a record is exempt within three~~
6 ~~business days of receipt of the request, unless otherwise provided in~~
7 ~~subdivision (5) of this subsection.~~ The certification shall:

8 (A) identify the records withheld;

9 (B) include the asserted statutory basis for denial and a brief
10 statement of the reasons and supporting facts for denial. ~~The custodian~~
11 ~~shall also;~~

12 (C) provide the names and titles or positions of each person
13 responsible for denial of the request; and

14 (D) notify the person of his or her right to appeal to the head of the
15 agency any adverse determination.

16 (3) ~~If appealed to the head of the agency, the head of the agency shall~~
17 ~~make a determination with respect to any appeal within five business days after~~
18 ~~the receipt of such appeal. If an appeal of the denial of the request for records~~
19 ~~is in whole or in part upheld, the agency shall notify the person making such~~
20 ~~request of the provisions for judicial review of that determination under section~~
21 ~~319 of this title. [Repealed.]~~

1 (4) If a record does not exist, the custodian shall promptly certify in
2 writing that the record does not exist under the name given to the custodian by
3 the applicant or by any other name known to the custodian.

4 (5) In unusual circumstances as herein specified, the time limits
5 prescribed in this ~~subsection~~ section may be extended by written notice to the
6 person making ~~such~~ the request setting forth the reasons for ~~such~~ the extension
7 and the date on which a determination is expected to be dispatched. No such
8 notice shall specify a date that would result in an extension for more than ten
9 business days from receipt of the request or, in the case of a reversal on appeal
10 by a head of the agency pursuant to subsection (c) of this section, from the date
11 of the determination on appeal. As used in this subdivision, “unusual
12 circumstances” means to the extent reasonably necessary to the proper
13 processing of the particular request:

14 (A) the need to search for and collect the requested records from field
15 facilities or other establishments that are separate from the office processing
16 the request;

17 (B) the need to search for, collect, and appropriately examine a
18 voluminous amount of separate and distinct records ~~which~~ that are demanded
19 in a single request; or

20 (C) the need for consultation, which shall be conducted with all
21 practicable speed, with another agency having a substantial interest in the

1 determination of the request or among two or more components of the agency
2 having substantial subject matter interest therein, or with the Attorney General.

3 ~~(b) Any person making a request to any agency for records under~~
4 ~~subsection (a) of this section shall be deemed to have exhausted the person's~~
5 ~~administrative remedies with respect to each request if the agency fails to~~
6 ~~comply within the applicable time limit provisions of this section. Upon any~~
7 ~~determination by an agency to comply with a request for records, the records~~
8 ~~shall be made available promptly to the person making such request. Any~~
9 ~~notification of denial of any request for records under this section shall set~~
10 ~~forth the names and titles or positions of each person responsible for the denial~~
11 ~~of such request.~~

12 (c)(1) Any denial of access by the custodian of a public record may be
13 appealed to the head of the agency. The head of the agency shall make a
14 written determination on an appeal within five business days after the receipt
15 of the appeal.

16 (2) A If the head of the agency upholds the denial of a request for
17 records, in whole or in part, the written determination shall include:

18 (A) the asserted statutory basis for upholding the denial and;

19 (B) a brief statement of the reasons and supporting facts for
20 upholding the denial; and

1 (C) notification of the provisions for judicial review of the
2 determination under section 319 of this title.

3 ~~(2)(3)~~ If the head of the agency reverses the denial of a request for
4 records, the records shall be promptly made available to the person making the
5 request. ~~A failure by the agency to comply with any of the time limit~~
6 ~~provisions of this section shall be deemed a final denial of the request for~~
7 ~~records by the agency.~~

8 * * *

9 (h) A records officer designated by the head of a State agency or
10 department pursuant to 3 V.S.A. § 218 shall be accountable for the processing
11 of requests for public records received by the records officer's agency or
12 department in accordance with this section.

13 Sec. 7. 1 V.S.A. § 318a is added to read:

14 § 318a. EXECUTIVE BRANCH AGENCY PUBLIC RECORDS REQUEST
15 SYSTEM

16 (a) The Secretary of Administration shall maintain and update the Public
17 Records Request System established pursuant to 2006 Acts and Resolves
18 No. 132, Sec. 3 and 2011 Acts and Resolves No. 59, Sec. 13 with the
19 information furnished under subsection (b) of this section and post System
20 information on the website of the Agency of Administration.

21 (b) All public agencies of the Executive Branch of the State:

1 (1) that receive a written request to inspect or copy a record under this
2 subchapter shall catalogue the request in the Public Records Request System
3 established and maintained by the Secretary of Administration by furnishing
4 the following information:

5 (A) the date the request was received;

6 (B) the agency that received the request;

7 (C) the person that made the request, including a contact name;

8 (D) the status of the request, including whether the request was
9 fulfilled in whole, fulfilled in part, or denied;

10 (E) if the request was fulfilled in part or denied, the exemption or
11 other grounds asserted as the basis for partial fulfillment or denial;

12 (F) the estimated hours necessary to respond to the request;

13 (G) the date the agency closed the request; and

14 (H) the elapsed time between receipt of the request and the date the
15 agency closed the request.

16 (2) shall post in a conspicuous location on its website a link to the
17 location on the Agency of Administration's website where Public Records
18 Request System information is maintained.

1 Sec. 8. REPEAL

2 2011 Acts and Resolves No. 59, Sec. 13 (State agency public request
3 system) is repealed.

4 * * * Effective Date * * *

5 Sec. 9. EFFECTIVE DATE

6 This act shall take effect on July 1, 2018.