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H.910

Introduced by Committee on Government Operations

Date:

Subject: Open Meeting Law; Public Records Act

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

- (1) add a definition to the Open Meeting Law and clarify what activities do not constitute a meeting under the Open Meeting Law;
- (2) establish when a series of less-than-a-quorum communications to or among members of a public body is prohibited under the Open Meeting Law;
- (3) clarify and update provisions related to time periods for responding to a Public Records Act request and specify an obligation of records officers of State agencies and departments to be accountable for the processing of requests for public records; and
- (4) codify a provision of existing law that requires the Secretary of Administration to maintain a Public Records Request System cataloguing information about Public Records Act requests received by State public agencies, require the Secretary to post System information on the Agency of Administration’s website, and require Executive Branch public agencies to post in a conspicuous location on their websites a link to the location on the 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. LEGISLATIVE INTENT

4 In rearranging the text of existing law in 1 V.S.A. § 318(b)-(c) within Sec. 5
5 of this act, the General Assembly intends to make the text more organized and
6 clear, and does not intend to effect any substantive changes through the
7 rearrangement of existing text.

8 Sec. 5. 1 V.S.A. § 318 is amended to read:

9 § 318. PROCEDURE

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

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

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

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

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

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

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

13 (A) identify the records withheld;

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

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

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

1 (3) ~~If appealed to the head of the agency, the head of the agency shall~~
2 ~~make a determination with respect to any appeal within five business days after~~
3 ~~the receipt of such appeal. If an appeal of the denial of the request for records~~
4 ~~is in whole or in part upheld, the agency shall notify the person making such~~
5 ~~request of the provisions for judicial review of that determination under section~~
6 ~~319 of this title. [Repealed.]~~

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

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

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

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

7 (C) the need for consultation, which shall be conducted with all
8 practicable speed, with another agency having a substantial interest in the
9 determination of the request or among two or more components of the agency
10 having substantial subject matter interest therein, or with the Attorney General.

11 ~~(b) Any person making a request to any agency for records under~~
12 ~~subsection (a) of this section shall be deemed to have exhausted the person's~~
13 ~~administrative remedies with respect to each request if the agency fails to~~
14 ~~comply within the applicable time limit provisions of this section. Upon any~~
15 ~~determination by an agency to comply with a request for records, the records~~
16 ~~shall be made available promptly to the person making such request. Any~~
17 ~~notification of denial of any request for records under this section shall set~~
18 ~~forth the names and titles or positions of each person responsible for the denial~~
19 ~~of such request.~~

20 (c)(1) Any denial of access by the custodian of a public record may be
21 appealed to the head of the agency. The head of the agency shall make a

1 written determination on an appeal within five business days after the receipt
2 of the appeal.

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

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

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

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

10 ~~(2)(3) If the head of the agency reverses the denial of a request for~~
11 ~~records, the records shall be promptly made available to the person making the~~
12 ~~request. A failure by the agency to comply with any of the time limit~~
13 ~~provisions of this section shall be deemed a final denial of the request for~~
14 ~~records by the agency.~~

15 * * *

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

1 Sec. 6. 1 V.S.A. § 318a is added to read:

2 § 318a. EXECUTIVE BRANCH AGENCY PUBLIC RECORDS REQUEST
3 SYSTEM

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

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

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

14 (A) the date the request was received;

15 (B) the agency that received the request;

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

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

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

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

