

1 TO THE HONORABLE SENATE:

2 The Committee on Government Operations to which was referred House
3 Bill No. 910 entitled “An act relating to the Open Meeting Law and the Public
4 Records Act” respectfully reports that it has considered the same and
5 recommends that the Senate propose to the House that the bill be amended by
6 striking out all after the enacting clause and inserting in lieu thereof the
7 following:

8 * * * Open Meeting Law * * *

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

10 § 310. DEFINITIONS

11 As used in this subchapter:

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

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

18 ~~(2)(3)(A)~~ “Meeting” means a gathering of a quorum of the members of a
19 public body for the purpose of discussing the business of the public body or for
20 the purpose of taking action.

1 (B) “Meeting” shall not mean written correspondence or an
2 electronic communication, including e-mail, telephone, or teleconferencing,
3 between members of a public body for the purpose of scheduling a meeting,
4 organizing an agenda, or distributing materials to discuss at a meeting,
5 provided that:

6 (i) no other business of the public body is discussed or
7 conducted; and

8 (ii) such a written correspondence or such an electronic
9 communication that results in written or recorded information shall be
10 available for inspection and copying under the Public Records Act as set forth
11 in chapter 5, subchapter 3 of this title.

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

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

1 ~~(3)~~(4) “Public body” means any board, council, or commission of the
2 State or one or more of its political subdivisions, any board, council, or
3 commission of any agency, authority, or instrumentality of the State or one or
4 more of its political subdivisions, or any committee of any of the foregoing
5 boards, councils, or commissions, except that “public body” does not include
6 councils or similar groups established by the Governor for the sole purpose of
7 advising the Governor with respect to policy.

8 ~~(4)~~(5) “Publicly announced” means that notice is given to an editor,
9 publisher, or news director of a newspaper or radio station serving the area of
10 the State in which the public body has jurisdiction, and to any person who has
11 requested under subdivision 312(c)(5) of this title to be notified of special
12 meetings.

13 ~~(5)~~(6) “Quasi-judicial proceeding” means a proceeding which is:

14 (A) a contested case under the Vermont Administrative Procedure
15 Act; or

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

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

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

6 * * * Public Records Act * * *

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

8 § 315. STATEMENT OF POLICY; SHORT TITLE

9 (a) It is the policy of this subchapter to provide for free and open
10 examination of records consistent with Chapter I, Article 6 of the Vermont
11 Constitution. Officers of government are trustees and servants of the people
12 and it is in the public interest to enable any person to review and criticize their
13 decisions even though such examination may cause inconvenience or
14 embarrassment. All people, however, have a right to privacy in their personal
15 and economic pursuits, which ought to be protected unless specific information
16 is needed to review the action of a governmental officer. Consistent with these
17 principles, the General Assembly hereby declares that certain public records
18 shall be made available to any person as hereinafter provided. To that end, the
19 provisions of this subchapter shall be liberally construed to implement this
20 policy, and the burden of proof shall be on the public agency to sustain its
21 action.

1 (b) The General Assembly finds that public records are essential to the
2 administration of State and local government. Public records contain
3 information that allows government programs to function, provides officials
4 with a basis for making decisions, and ensures continuity with past operations.
5 Public records document the legal responsibilities of government, help protect
6 the rights of citizens, and provide citizens a means of monitoring government
7 programs and measuring the performance of public officials. Public records
8 provide documentation for the functioning of government and for the
9 retrospective analysis of the development of Vermont government and the
10 impact of programs on citizens.

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

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

14 § 316. ACCESS TO PUBLIC RECORDS AND DOCUMENTS

15 (a) Any person may inspect or copy any public record of a public agency,
16 as follows:

17 (1) For any agency, board, department, commission, committee, branch,
18 instrumentality, or authority of the State, a person may inspect a public record
19 on any day other than a Saturday, Sunday, or a legal holiday, between the
20 hours of nine o'clock and 12 o'clock in the forenoon and between one o'clock
21 and four o'clock in the afternoon.

1 (2) For any agency, board, committee, department, instrumentality,
2 commission, or authority of a political subdivision of the State, a person may
3 inspect a public record during customary business hours.

4 * * *

5 (h) Standard formats for copies of public records shall be as follows: for
6 copies in paper form, a photocopy of a paper public record ~~or a hard copy~~
7 ~~print-out of a public record maintained in electronic form~~; for copies in
8 electronic form, the format in which the record is maintained. Any format
9 other than the formats described in this subsection is a nonstandard format.

10 (i)(1) If an agency maintains public records solely in an electronic format,
11 nonexempt public records shall be available for copying in either the standard
12 electronic format or the standard, and the requesting party asks to be provided
13 copies of the records in a paper format, as designated by the party requesting
14 the records the agency may decline the request to provide copies in paper
15 format only if the agency, upon request, furnishes the requesting party a
16 location at the agency and access to equipment as needed to view the records
17 consistent with subsection (a) of this section.

18 (2) ~~An~~ Subject to subdivision (1) of this subsection, an agency may, but
19 is not required to, provide copies of public records in a nonstandard format, to
20 create a public record, or to convert paper public records to electronic format.

21 * * *

1 Sec. 5. 1 V.S.A. § 317 is amended to read:

2 § 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND
3 DOCUMENTS; EXEMPTIONS

4 * * *

5 (e)(1) In the fifth year after the effective date of the enactment,
6 reenactment, or substantive amendment of an exemption to the Public Records
7 Act, the exemption shall be repealed on July 1 of that fifth year except if the
8 General Assembly reenacts the exemption prior to July 1 of the fifth year or if
9 the law otherwise requires.

10 (2) An act that enacts, reenacts, or substantively amends an exemption
11 to the Public Records Act shall explicitly provide for its repeal on July 1 of the
12 fifth year after the effective date of the exemption unless the act specifically
13 provides otherwise.

14 [INCLUDE? Extend to any exemption that's repealed?] (3) Unless
15 otherwise provided by law, a record produced or acquired during the period of
16 applicability of an exemption that is subsequently repealed in accordance with
17 this subsection shall remain exempt following the repeal of the exemption.

18 Sec. 6. LEGISLATIVE INTENT

19 (a) In Sec. 5 of this act, the repeal and reenactment provision added in
20 1 V.S.A. § 317(e) shall apply only to Public Records Act exemptions that are
21 enacted, reenacted, or substantively amended after the effective date of this act.

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

5 Sec. 7. 1 V.S.A. § 318 is amended to read:

6 § 318. PROCEDURE

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

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

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

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

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

19 (1) If the record is in active use or in storage and therefore not available
20 for use at the time the person asks to examine it, the custodian shall
21 promptly certify this fact in writing to the applicant and, in the certification, set

1 a date and hour within one calendar week of the request when the record will
2 be available ~~for examination.~~

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

10 (A) identify the records withheld;

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

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

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

18 (3) ~~If appealed to the head of the agency, the head of the agency shall~~
19 ~~make a determination with respect to any appeal within five business days after~~
20 ~~the receipt of such appeal. If an appeal of the denial of the request for records~~
21 ~~is in whole or in part upheld, the agency shall notify the person making such~~

1 ~~request of the provisions for judicial review of that determination under section~~
2 ~~319 of this title. [Repealed.]~~

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

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

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

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

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

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

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

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

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

- 1 (b) All public agencies of the Executive Branch of the State:
- 2 (1) that receive a written request to inspect or copy a record under this
- 3 subchapter shall catalogue the request in the Public Records Request System
- 4 established and maintained by the Secretary of Administration by furnishing
- 5 the following information:
- 6 (A) the date the request was received;
- 7 (B) the agency that received the request;
- 8 (C) the person that made the request, including a contact name;
- 9 (D) the status of the request, including whether the request was
- 10 fulfilled in whole, fulfilled in part, or denied;
- 11 (E) if the request was fulfilled in part or denied, the exemption or
- 12 other grounds asserted as the basis for partial fulfillment or denial;
- 13 (F) the estimated hours necessary to respond to the request;
- 14 (G) the date the agency closed the request; and
- 15 (H) the elapsed time between receipt of the request and the date the
- 16 agency closed the request; and
- 17 (2) shall post in a conspicuous location on its website a link to the
- 18 location on the Agency of Administration’s website where Public Records
- 19 Request System information is maintained.

1 Sec. 9. REPEAL

2 2011 Acts and Resolves No. 59, Sec. 13 (State agency public request

3 system) is repealed.

4 *** Effective Date ***

5 Sec. 10. EFFECTIVE DATE

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

7

8

9 (Committee vote: _____)

10

11

12

Senator _____

FOR THE COMMITTEE

