



STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNCIL

MEMORANDUM

To: Members, Joint Information Technology Oversight Committee
From: Rebecca Wasserman and Maria Royle
Date: July 8, 2019
Subject: Open Meeting Law and Executive Session

In advance of the Joint Information Technology Oversight Committee (the Committee) meeting on July 19, 2019, 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 cybersecurity.

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, based on the language of the Act, the OML does **not** apply to committees, councils, working groups, etc., comprised entirely of legislators.

Although the General Assembly and its bodies are not subject to the OML, the Vermont Constitution requires that the doors of the State House shall be open for the admission of all persons who behave decently, except only when the welfare of the State may require them to be shut.¹ Thus, meetings of the General Assembly are open to the public and are governed under legislative rules.

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

¹ Vt. Const. ch. II, § 8.

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.

The House Rules do not address the authority of a House committee entering into an executive session. Mason's Rules is the governing authority for all matters not covered by House Rules. Under Mason's Rule 4.3, any conflict between rules shall be resolved according to the order of precedence in Rule 4.2. Rule 4.2 states that "adopted rules" take precedence over statute and "adopted parliamentary authority." Therefore, in the absence of House Rules on entering executive session, the adopted Senate Rule on executive session would apply.

Accordingly, while the current chair of the Committee is a member of the House, the Committee would use Senate Rule 96 for entering into executive session. 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. It also limits the matters that a committee may consider in executive session. Based on the potential discussions relating to cybersecurity, the ground most likely to be relevant to the Committee is "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 cybersecurity: "I move that the committee enter into executive session pursuant to Senate Rule 96 to discuss the State's cybersecurity measures 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 should be recorded.
4. A decision on who can be part of the closed session should be made prior to making the motion to go into executive session. This would include any necessary witnesses for the discussion proposed for the executive session.
5. 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 cybersecurity, which 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 Rebecca Wasserman or Maria Royle if you have any general questions about the Open Meeting Law.