Vermont Citizens Advisory Committee

on

Lake Champlain's Future

COMMITTEE MEMBER MANUAL

Approved October 3, 2018

Membership revised September 23, 2019 along with statutory updates

Vermont Citizens Advisory Committee on Lake Champlain's Future

The Vermont Citizens Advisory Committee on Lake Champlain's Future (VTCAC) is a diverse group of citizens, lake advocates, business representatives, farmers, and legislators united through their interest in a clean, healthy Lake Champlain. The 14-member committee (ten citizens and four state legislators) provides an opportunity for diverse interests to work together to develop an action agenda for improving water quality and enhancing the natural, cultural, recreational, and economic resources of the Lake Champlain Basin. VTCAC members are charged with submitting an annual report to the Vermont General Assembly that maps out recommended actions to protect the integrity of the lake. The VTCAC meets regularly as an organization and annually with New York and Quebec CACs to discuss issues of mutual concern and to advise the Lake Champlain Steering Committee established under the Memorandum of Understanding on Environmental Cooperation on Lake Champlain. The Lake Champlain Steering Committee guides the Lake Champlain Basin Program and is responsible for implementing the Lake Champlain Management Plan "Opportunities for Action." The Vermont, New York, and Quebec CAC chairs each hold a seat on the Lake Champlain Steering Committee, the governing board for the Lake Champlain Basin Program.

Vermont Citizens Advisory Committee (VT CAC)

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ENABLING LEGISLATION

Vermont Statutes Annotated

Title 10: Conservation and Development

Chapter 63: VERMONT CITIZENS ADVISORY COMMITTEE ON LAKE CHAMPLAIN'S FUTURE

10 V.S.A. § 1960. Vermont citizens advisory committee on Lake Champlain's future created

§ 1960. Vermont citizens advisory committee on Lake Champlain's future created

(a) The Vermont citizens advisory committee on Lake Champlain's future is created to gather and disseminate information and make recommendations about the condition and management of the waters of the Lake Champlain basin region. The advisory committee shall consist of 14 members: two senators appointed by the committee on committees, two representatives appointed by the speaker of the house, and ten Vermont citizens, including one recommended by the secretary of agriculture, food and markets, who come from a variety of geographic locations in Vermont appointed by the governor with advice and consent of the senate. The advisory committee shall elect a chair by a majority vote of its members. Legislative committee members shall serve two-year terms that coincide with their term of office, or until the biennial appointment of successors. Other advisory committee members shall be appointed for three-year terms, except that initial appointments shall be for staggered terms.

(b) Advisory committee members shall receive a per diem pursuant to 32 V.S.A. § 1010 and shall be reimbursed for necessary expenses incurred in performance of their duties as advisory committee members.

(c) The secretary, in consultation with the advisory committee, may appoint an executive director who shall be an exempt state employee and who shall report to the secretary.

(d) The advisory committee shall be assigned to the agency of natural resources for budgetary and administrative purposes.

(e) The advisory committee shall present a proposed budget to the secretary before September 15 of each year.

(f) [Repealed.] (Added 1989, No. 265 (Adj. Sess.), § 1; amended 2003, No. 42, § 2, eff. May 27, 2003; 2007, No. 121 (Adj. Sess.), § 32.)

10 V.S.A. § 1961. Powers and duties

§ 1961. Powers and duties

(a) The advisory committee shall:

(1) Gather existing scientific data concerning the condition of the water and wildlife in the Lake Champlain basin region. Such data may include information concerning:

(A) Factors affecting water quality of the lake with emphasis on the levels and sources of nutrient loading and the presence of toxic materials.

(B) Condition of the lake's fishery resource and health of wildlife populations.

(C) Level and impact of aquatic nuisance infestations.

(D) Potential and current impacts of hazardous material spills.

(E) Impact of shoreline development and marinas.

(F) Quality and purity of the lake as a drinking water source.

(2) Using existing government and nonprofit resources whenever possible, gather information about activities which affect or have the potential to affect the water and wildlife in the Lake Champlain basin region. The advisory committee shall also consider the effect of these activities on regional needs for agricultural and industrial development, for employment opportunities and for a high quality environment. Such information may include data concerning:

(A) Recreational management issues, including land acquisition for protection of valuable natural areas, or to enhance public access where desired, or both.

(B) Federal, state and local activities that affect the lake.

(3) Act as the citizens advisory committee to the joint committee created in the memorandum of understanding on environmental cooperation on the management of Lake Champlain, and signed by the governor of Vermont, governor of New York, and the premier of Quebec on August 23, 1988. The advisory committee shall also work with the New York and Quebec representatives of the Lake Champlain citizens advisory committee created as a result of the memorandum of understanding.

(4) By June 15, 1991 and every January thereafter, recommend to the secretary, a Vermont policy for Lake Champlain or changes to existing policy. By June 15, 1991 and every January thereafter, the secretary shall recommend to the legislature a policy or policy changes regarding Lake Champlain. The policy shall:

(A) Address management concerns identified under this subsection.

(B) Recommend a governance process for making decisions regarding cooperative management of the lake's cultural and natural resources, which may include development of a tripartite governmental framework ratified by Congress.

(C) Recommend a process for creating a research consortium to monitor the condition of the lake.

(D) Recommend ongoing funding sources for carrying out the purposes of this chapter.

(5) On or before June 15, 1991 and every January thereafter present a report to the Vermont legislature. The report shall include the following:

(A) An update on the quality of the waters of the lake.

(B) Findings of pertinent research.

(C) An action plan including, but not limited to, water quality and fishery improvement measures and ways to enhance public use of and access to the lake.

(D) Recommended budgets and revenue sources including an expanded lake user fee structure.

(6) Carry out activities designed to educate the public about Lake Champlain issues and to disseminate information gathered under this subsection.

(7) Act as a citizen's advisory committee to the federal Lake Champlain management conference created in the Lake Champlain Special Designation Act of 1990 (PL 101-596). The advisory committee shall review the activities of the conference and make appropriate recommendations to the conference members. After June 15, 1991, all

recommendations shall be based upon the Citizen's Advisory Committee Action Plan duly adopted after public comment and one or more public hearings.

(b) The advisory committee may:

(1) Contract for studies and prepare reports on existing or potential problems within the basin. In contracting for studies the advisory committee shall follow public bidding procedures as prescribed for executive branch agencies by the secretary of administration.

(2) Apply for grants or other funding sources to finance or assist in effectuating the purposes of this chapter. The advisory committee may accept grants or funds only pursuant to the provisions of 32 V.S.A. § 5.

(3) With the secretary's approval, present information and make recommendations to federal, state and local legislatures regarding the coordinated management of the lake and for the purpose of helping the legislatures to make sound decisions regarding management of the lake.

(4) Offer to act as a forum for discussion and mediation of lake-related conflicts.

(5) Work cooperatively with governmental and other groups having jurisdiction over or interested in the management and quality of Lake Champlain. (Added 1989, No. 265 (Adj. Sess.), § 1; amended 1991, No. 27.)

United States Code

33 USC 1270 Lake Champlain Basin Program

(a) Establishment

(1) In general There is established a Lake Champlain Management Conference to develop a comprehensive pollution prevention, control, and restoration plan for Lake Champlain. The Administrator shall convene the management conference within ninety days of November 16, 1990.

(2) Implementation

The Administrator –

(A) may provide support to the State of Vermont, the State of New York, and the New England Interstate Water Pollution Control Commission for the implementation of the Lake Champlain Basin Program; and

(B) shall coordinate actions of the Environmental Protection Agency under subparagraph (A) with the actions of other appropriate Federal agencies.

(b) Membership

The Members of the Management Conference shall be comprised of –

(1) the Governors of the States of Vermont and New York;

(2) each interested Federal agency, not to exceed a total of five members;

(3) the Vermont and New York Chairpersons of the Vermont, New York, Quebec Citizens Advisory Committee for the Environmental Management of Lake Champlain;

(4) four representatives of the State legislature of Vermont;

(5) four representatives of the State legislature of New York;

(6) six persons representing local governments having jurisdiction over any land or water within the Lake Champlain basin, as determined appropriate by the Governors; and

(7) eight persons representing affected industries, nongovernmental organizations, public and private educational institutions, and the general public, as determined appropriate by the trigovernmental Citizens Advisory Committee for the Environmental Management of Lake Champlain, but not to be current members of the Citizens Advisory Committee.

(c) Technical Advisory Committee

(1) The Management Conference shall, not later than one hundred and twenty days after November 16, 1990, appoint a Technical Advisory Committee.

(2) Such Technical Advisory Committee shall consist of officials of: appropriate departments and agencies of the Federal Government; the State governments of New York and Vermont; and governments of political subdivisions of such States; and public and private research institutions. (d) Research program

The Management Conference shall establish a multi-disciplinary environmental research program for Lake Champlain. Such research program shall be planned and conducted jointly with the Lake Champlain Research Consortium.

(e) Pollution prevention, control, and restoration plan

(1) Not later than three years after November 16, 1990, the Management Conference shall publish a pollution prevention, control, and restoration plan for Lake Champlain.

(2) The Plan developed pursuant to this section shall –

(A) identify corrective actions and compliance schedules addressing point and nonpoint sources of pollution necessary to restore and maintain the chemical, physical, and biological integrity of water quality, a balanced, indigenous population of shellfish, fish and wildlife, recreational, and economic activities in and on the lake;

(B) incorporate environmental management concepts and programs established in State and Federal plans and programs in effect at the time of the development of such plan;

(C) clarify the duties of Federal and State agencies in pollution prevention and control activities, and to the extent allowable by law, suggest a timetable for adoption by the appropriate Federal and State agencies to accomplish such duties within a reasonable period of time;

(D) describe the methods and schedules for funding of programs, activities, and projects identified in the Plan, including the use of Federal funds and other sources of funds;

(E) include a strategy for pollution prevention and control that includes the promotion of pollution prevention and management practices to reduce the amount of pollution generated in the Lake Champlain basin; and

(F) be reviewed and revised, as necessary, at least once every 5 years, in consultation with the Administrator and other appropriate Federal agencies.

(3) The Administrator, in cooperation with the Management Conference, shall provide for public review and comment on the draft Plan. At a minimum, the Management Conference shall conduct one public meeting to hear comments on the draft plan in the State of New York and one such meeting in the State of Vermont.

(4) Not less than one hundred and twenty days after the publication of the Plan required pursuant to this section, the Administrator shall approve such plan if the plan meets the requirements of this section and the Governors of the States of New York and Vermont concur. (5) Upon approval of the plan, such plan shall be deemed to be an approved management program for the purposes of section 1329(h) of this title and such plan shall be deemed to be an approved comprehensive conservation and management plan pursuant to section 1330 of this title.

(f) Grant assistance

(1) The Administrator may, in consultation with participants in the Lake Champlain Basin Program, make grants to State, interstate, and regional water pollution control agencies, and public or nonprofit agencies, institutions, and organizations.

(2) Grants under this subsection shall be made for assisting research, surveys, studies, and modeling and technical and supporting work necessary for the development and implementation of the Plan.

(3) The amount of grants to any person under this subsection for a fiscal year shall not exceed 75 per centum of the costs of such research, survey, study and work and shall be made available on the condition that non-Federal share of such costs are provided from non-Federal sources. (4) The Administrator may establish such requirements for the administration of grants as he determines to be appropriate.

(g) Definitions

In this section:

(1) Lake Champlain Basin Program

The term "Lake Champlain Basin Program" means the coordinated efforts among the Federal Government, State governments, and local governments to implement the Plan.

(2) Lake Champlain drainage basin

The term "Lake Champlain drainage basin" means all or part of Clinton, Franklin, Hamilton, Warren, Essex, and Washington counties in the State of New York and all or part of Franklin, Grand Isle, Chittenden, Addison, Rutland, Bennington, Lamoille, Orange, Washington, Orleans, and Caledonia counties in Vermont, that contain all of the streams, rivers, lakes, and other bodies of water, including wetlands, that drain into Lake Champlain.

(3) Plan

The term "Plan" means the plan developed under subsection (e) of this section.

(h) No effect on certain authority

Nothing in this section –

(1) affects the jurisdiction or powers of –

(A) any department or agency of the Federal Government or any State government; or

(B) any international organization or entity related to Lake Champlain created by treaty or memorandum to which the United States is a signatory;

(2) provides new regulatory authority for the Environmental Protection Agency; or

(3) affects section 304 of the Great Lakes Critical Programs Act of 1990 (Public Law 101-596; 33 U.S.C. 1270 note).

(i) Authorization

There are authorized to be appropriated to the Environmental Protection Agency to carry out this section –

(1) $2,000,000 for each of fiscal years 1991, 1992, 1993, 1994, and 1995;

(2) such sums as are necessary for each of fiscal years 1996 through 2003; and

(3) $11,000,000 for each of fiscal years 2004 through 2008.

GOVERNANCE POLICIES

All members of the Citizen's Advisory Committee on Lake Champlain's Future are governed by Executive Orders No. 09-11 (and codified as Executive Order No. 3-45) known as the **"Executive Code of Ethics"** promulgated by the Governor of the State of Vermont. The Executive Order defines and describes appointed member's conduct and affairs as appointed public servants in order to instill public confidence and trust in government. Independent, impartial decision-making and transparent disclosures of any appearance of a conflict of interest are critical elements of proper conduct as members.

Attendance and Participation Policy

All members are expected to attend regularly scheduled meetings of the CAC. Members have a legal and moral responsibility to ensure that the committee does the best work possible in pursuit of its goals. A member must believe in the purpose and the mission of the organization, and should act responsibly and prudently as its steward.

As part of the responsibilities as a member, a member will articulate the committee's work and values to the community, represent the community, and act as a spokesperson; will attend at least 75% of meetings, sub-committee meetings, and special events; will read all meeting materials in advance and arrive prepared at meetings; will participate in and take responsibility for making decisions on issues, policies and other committee matters; will faithfully serve the duration of their term unless personal or business matters make it impossible to do so; and that if they fail to responsibly satisfy these commitments to the CAC, will expect CAC leadership members to contact them and discuss these responsibilities with them.

Conflicts of Interest Policy

Committee members have an obligation to conduct business within guidelines that rule out actual or potential conflicts of interest. The purpose of these guidelines is to provide general direction and encourage board members and employees to seek further clarification on issues related to the subject of acceptable standards of operation.

An actual or potential conflict of interest occurs when a member is in a position to influence a decision that may result in direct or indirect personal gain as a result of CAC's activities. If a member has any influence on any material transactions, it is imperative that he or she discloses to the Chair, Vice-chair or Executive Director of the committee as soon as possible the existence of any actual or potential conflict of interest so that safeguards can be established to protect all parties.

In general, member:

- Will not provide preferential or unfair treatment to any personal, private or public interest, family member, or member of the appointee's household if such could create a conflict of interest.
- Will avoid any outside business relationships with other businesses or interests if that relationship creates a conflict of interest by influencing decisions made by that person in the performance of their regular duties for the CAC.

Members should make appropriate disclosures to executive members of the Committee as soon as an appearance of a conflict may arise.

All meetings of the Vermont Citizens Advisory Committee on Lake Champlain's Future are subject to the Vermont Open Meeting Law and Public Records Act, so committee members should have no expectations of confidentiality for their participation during CAC meetings. The text of the acts follows:

The Vermont Statutes Online
Title 1: General Provisions
Chapter 5: Common Law; General Rights
Subchapter 1: Generally
§ 271. Common law adopted
So much of the common law of England as is applicable to the local situation and circumstances and is not repugnant to the constitution or laws shall be laws in this State and courts shall take notice thereof and govern themselves accordingly.
§ 272. Equality of privilege
In cases proper for the cognizance of the civil authority and the courts of judicature in this State, citizens of the United States shall be equally entitled to the privileges of law and justice with citizens of this State.
§ 273. Eligibility to hold office
A person shall not be debarred on account of sex from holding any office or position of trust or responsibility under the State, including U.S. Senator and Representative to Congress or any county, town, city, village, town school district, or incorporated fire, lighting, or school district office.
Subchapter 2: Public Information
§ 310. Definitions
As used in this subchapter:
(1) "Business of the public body" means the public body's governmental functions, including any matter over which the public body has supervision, control, jurisdiction, or advisory power.
(2) "Deliberations" means weighing, examining, and discussing the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.
(3)(A) "Meeting" means a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action.
(B) "Meeting" shall not mean any communication, including in person or through e-mail, telephone, or teleconferencing, between members of a public body for the purpose of scheduling a meeting, organizing an agenda, or distributing materials to discuss at a meeting, provided that:
(i) no other business of the public body is discussed or conducted; and
(ii) such a communication that results in written or recorded information shall be available for inspection and copying under the Public Records Act as set forth in chapter 5, subchapter 3 of this title.
(C) "Meeting" shall not mean occasions when a quorum of a public body attends social gatherings, conventions, conferences, training programs, press conferences, media events, or otherwise gathers, provided that the public body does not discuss specific business of the public body that, at the time of the exchange, the participating members expect to be business of the public body at a later time.
(D) "Meeting" shall not mean a gathering of a quorum of a public body at a duly warned meeting of another public body, provided that the attending public body does not take action on its business.
(4) "Public body" means 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, except that "public body" does not include councils or similar groups established by the Governor for the sole purpose of advising the Governor with respect to policy.

(5) "Publicly announced" means that notice is given to an editor, publisher, or news director of a newspaper or radio station serving the area of the State in which the public body has jurisdiction, and to any person who has requested under subdivision 312(c)(5) of this title to be notified of special meetings.
(6) "Quasi-judicial proceeding" means a proceeding which is:
(A) a contested case under the Vermont Administrative Procedure Act; or
(B) a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunity to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, and the result of which is appealable by a party to a higher authority. (Added 1987, No. 256 (Adj. Sess.), § 1; amended 2013, No. 143 (Adj. Sess.), § 1; 2017, No. 166 (Adj. Sess.), § 1.)
§ 311. Declaration of public policy; short title
VERMONT GENERAL ASSEMBLY
(a) In enacting this subchapter, the legislature finds and declares that public commissions, boards, and councils and other public agencies in this State exist to aid in the conduct of the people's business and are accountable to them pursuant to Chapter I, Article VI of the Vermont Constitution.
(b) This subchapter may be known and cited as the Vermont Open Meeting Law. (Amended 1979, No. 151 (Adj. Sess.), § 1, eff. April 24, 1980.)
§ 312. Right to attend meetings of public agencies
(a)(1) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. No resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at such open meeting, except as provided under subdivision 313(a)(2) of this title. A meeting of a public body is subject to the public accommodation requirements of 9 V.S.A. chapter 139. A public body shall electronically record all public hearings held to provide a forum for public comment on a proposed rule, pursuant to 3 V.S.A. § 840. The public shall have access to copies of such electronic recordings as described in section 316 of this title.
(2) Participation in meetings through electronic or other means.
(A) As long as the requirements of this subchapter are met, one or more of the members of a public body may attend a regular, special, or emergency meeting by electronic or other means without being physically present at a designated meeting location.
(B) If one or more members attend a meeting by electronic or other means, such members may fully participate in discussing the business of the public body and voting to take an action, but any vote of the public body that is not unanimous shall be taken by roll call.
(C) Each member who attends a meeting without being physically present at a designated meeting location shall:
(i) identify himself or herself when the meeting is convened; and
(ii) be able to hear the conduct of the meeting and be heard throughout the meeting.
(D) If a quorum or more of the members of a public body attend a meeting without being physically present at a designated meeting location, the agenda required under subsection (d) of this section shall designate at least one physical location where a member of the public can attend and participate in the meeting.
At least one member of the public body, or at least one staff or designee of the public body, shall be physically present at each designated meeting location.
(b)(1) Minutes shall be taken of all meetings of public bodies. The minutes shall cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting. Minutes shall include at least the following minimal information:
(A) all members of the public body present;
(B) all other active participants in the meeting;
(C) all motions, proposals, and resolutions made, offered, and considered, and what disposition is made of same; and
(D) the results of any votes, with a record of the individual vote of each member if a roll call is taken.
(2) Minutes of all public meetings shall be matters of public record, shall be kept by the clerk or secretary of the public body, and shall be available for inspection by any person and for purchase of copies at cost upon request after five calendar days from the date of any meeting. Meeting minutes shall be posted no later than five calendar days from the date of the meeting to a website, if one exists, that the public body maintains or has designated as the official website of the body. Except for draft minutes that have been substituted with updated minutes, posted minutes shall not be removed from the website sooner than one year from the date of the meeting for which the minutes were taken.

(c)(1) The time and place of all regular meetings subject to this section shall be clearly designated by statute, charter, regulation, ordinance, bylaw, resolution, or other determining authority of the public body, and this information shall be available to any person upon request. The time and place of all public hearings and meetings scheduled by all Executive Branch State agencies, departments, boards, or commissions shall be available to the public as required under 3 V.S.A. § 2222(c).
(2) The time, place, and purpose of a special meeting subject to this section shall be publicly announced at least 24 hours before the meeting. Municipal public bodies shall post notices of special meetings in or near the municipal clerk's office and in at least two other designated public places in the municipality, at least 24 hours before the meeting. In addition, notice shall be given, either orally or in writing, to each member of the public body at least 24 hours before the meeting, except that a member may waive notice of a special meeting.
(3) Emergency meetings may be held without public announcement, without posting of notices, and without 24-hour notice to members, provided some public notice thereof is given as soon as possible before any such meeting. Emergency meetings may be held only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention by the public body.
(4) Any adjourned meeting shall be considered a new meeting, unless the time and place for the adjourned meeting is announced before the meeting adjourns.
(5) A person may request in writing that a public body notify the person of special meetings of the public body. The request shall apply only to the calendar year in which it is made, unless made in December, in which case it shall apply also to the following year.
(d)(1) At least 48 hours prior to a regular meeting, and at least 24 hours prior to a special meeting, a meeting agenda shall be:
(A) posted to a website, if one exists, that the public body maintains or designates as the official website of the body; and
(B) in the case of a municipal public body, posted in or near the municipal office and in at least two other designated public places in the municipality.
(2) A meeting agenda shall be made available to a person prior to the meeting upon specific request.
(3)(A) Any addition to or deletion from the agenda shall be made as the first act of business at the meeting.
(B) Any other adjustment to the agenda may be made at any time during the meeting.
(e) Nothing in this section or in section 313 of this title shall be construed as extending to the Judicial Branch of the Government of Vermont or of any part of the same or to the Public Utility Commission; nor shall it extend to the deliberations of any public body in connection with a quasi-judicial proceeding; nor shall anything in this section be construed to require the making public of any proceedings, records, or acts which are specifically made confidential by the laws of the United States of America or of this State.
(f) A written decision issued by a public body in connection with a quasi-judicial proceeding need not be adopted at an open meeting if the decision will be a public record.
(g) The provisions of this subchapter shall not apply to site inspections for the purpose of assessing damage or making tax assessments or abatements, clerical work, or work assignments of staff or other personnel. Routine, day-to-day administrative matters that do not require action by the public body may be conducted outside a duly warned meeting, provided that no money is appropriated, expended, or encumbered.
(h) At an open meeting, the public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting, as long as order is maintained. Public comment shall be subject to reasonable rules established by the chairperson. This subsection shall not apply to quasi-judicial proceedings.
(i) Nothing in this section shall be construed to prohibit the Parole Board from meeting at correctional facilities, with attendance at the meeting subject to rules regarding access and security established by the superintendent of the facility. (Amended 1973, No. 78, § 1, eff. April 23, 1973; 1979, No. 151 (Adj. Sess.), § 2; 1987, No. 256 (Adj. Sess.), § 2; 1997, No. 148 (Adj. Sess.), § 64, eff. April 29, 1998; 1999, No. 146 (Adj. Sess.), § 7; 2013, No. 143 (Adj. Sess.), § 2; 2015, No. 129 (Adj. Sess.), § 1, eff. May 24, 2016.)
§ 313. Executive sessions
(a) No public body may hold an executive session from which the public is excluded, except by the affirmative vote of two-thirds of its members present in the case of any public body of State government or of a majority of its members present in the case of any public body of a municipality or other political subdivision. A motion to go into executive session shall indicate the nature of the business of the executive session, and no other matter may be considered in the executive session. Such vote shall be taken in the course of an open meeting and the result of the vote recorded in the

minutes. No formal or binding action shall be taken in executive session except for actions relating to the securing of real estate options under subdivision (2) of this subsection. Minutes of an executive session need not be taken, but if they are, the minutes shall, notwithstanding subsection 312(b) of this title, be exempt from public copying and inspection under the Public Records Act. A public body may not hold an executive session except to consider one or more of the following:
(1) after making a specific finding that premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage:
(A) contracts;
(B) labor relations agreements with employees;
(C) arbitration or mediation;
(D) grievances, other than tax grievances;
(E) pending or probable civil litigation or a prosecution, to which the public body is or may be a party;
(F) confidential attorney-client communications made for the purpose of providing professional legal services to the body;
(2) the negotiating or securing of real estate purchase or lease options;
(3) the appointment or employment or evaluation of a public officer or employee, provided that the public body shall make a final decision to hire or appoint a public officer or employee in an open meeting and shall explain the reasons for its final decision during the open meeting;
(4) a disciplinary or dismissal action against a public officer or employee; but nothing in this subsection shall be construed to impair the right of such officer or employee to a public hearing if formal charges are brought;
(5) a clear and imminent peril to the public safety;
(6) records exempt from the access to public records provisions of section 316 of this title; provided, however, that discussion of the exempt record shall not itself permit an extension of the executive session to the general subject to which the record pertains;
(7) the academic records or suspension or discipline of students;
(8) testimony from a person in a parole proceeding conducted by the Parole Board if public disclosure of the identity of the person could result in physical or other harm to the person;
(9) information relating to a pharmaceutical rebate or to supplemental rebate agreements, which is protected from disclosure by federal law or the terms and conditions required by the Centers for Medicare and Medicaid Services as a condition of rebate authorization under the Medicaid program, considered pursuant to 33 V.S.A. §§ 1998(f)(2) and 2002(c);
(10) security or emergency response measures, the disclosure of which could jeopardize public safety.
(b) Attendance in executive session shall be limited to members of the public body, and, in the discretion of the public body, its staff, clerical assistants and legal counsel, and persons who are subjects of the discussion or whose information is needed.
(c) The Senate and House of Representatives, in exercising the power to make their own rules conferred by Chapter II of the Vermont Constitution, shall be governed by the provisions of this section in regulating the admission of the public as provided in Chapter II, § 8 of the Constitution. (Amended 1973, No. 78, § 2, eff. April 23, 1973; 1979, No. 151 (Adj. Sess.), § 3, eff. April 24, 1980; 1987, No. 256 (Adj. Sess.), §§ 3, 4; 1997, No. 148 (Adj. Sess.), § 65, eff. April 29, 1998; 2005, No. 71, § 308a, eff. June 21, 2005; 2011, No. 59, § 7; 2013, No. 143 (Adj. Sess.), § 3; 2015, No. 23, § 1; 2017, No. 95 (Adj. Sess.), § 1, eff. April 11, 2018.)
§ 314. Penalty and enforcement
(a) A person who is a member of a public body and who knowingly and intentionally violates the provisions of this subchapter, a person who knowingly and intentionally violates the provisions of this subchapter on behalf or at the behest of a public body, or a person who knowingly and intentionally participates in the wrongful exclusion of any person or persons from any meeting subject to this subchapter shall be guilty of a misdemeanor and shall be fined not more than $500.00.
(b)(1) Prior to instituting an action under subsection (c) of this section, the Attorney General or any person aggrieved by a violation of the provisions of this subchapter shall provide the public body written notice that alleges a specific violation of this subchapter and requests a specific cure of such violation. The public body will not be liable for attorney's fees and litigation costs under subsection (d) of this section if it cures in fact a violation of this subchapter in accordance with the requirements of this subsection.

(2) Upon receipt of the written notice of alleged violation, the public body shall respond publicly to the alleged violation within 10 calendar days by:
(A) acknowledging the violation of this subchapter and stating an intent to cure the violation within 14 calendar days; or
(B) stating that the public body has determined that no violation has occurred and that no cure is necessary.
(3) Failure of a public body to respond to a written notice of alleged violation within 10 calendar days shall be treated as a denial of the violation for purposes of enforcement of the requirements of this subchapter.
(4) Within 14 calendar days after a public body acknowledges a violation under subdivision (2)(A) of this subsection, the public body shall cure the violation at an open meeting by:
(A) either ratifying, or declaring as void, any action taken at or resulting from:
(i) a meeting that was not noticed in accordance with subsection 312(c) of this title; or
(ii) a meeting that a person or the public was wrongfully excluded from attending; or
(iii) an executive session or portion thereof not authorized under subdivisions 313(a)(1)-(10) of this title; and
(B) adopting specific measures that actually prevent future violations.
(c) Following an acknowledgment or denial of a violation and, if applicable, following expiration of the 14-calendar-day cure period for public bodies acknowledging a violation, the Attorney General or any person aggrieved by a violation of the provisions of this subchapter may bring an action in the Civil Division of the Superior Court in the county in which the violation has taken place for appropriate injunctive relief or for a declaratory judgment. An action may be brought under this section no later than one year after the meeting at which the alleged violation occurred or to which the alleged violation relates. Except as to cases the court considers of greater importance, proceedings before the Civil Division of the Superior Court, as authorized by this section and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.
(d) The court shall assess against a public body found to have violated the requirements of this subchapter reasonable attorney's fees and other litigation costs reasonably incurred in any case under this subchapter in which the complainant has substantially prevailed, unless the court finds that:
(1)(A) the public body had a reasonable basis in fact and law for its position; and
(B) the public body acted in good faith. In determining whether a public body acted in good faith, the court shall consider, among other factors, whether the public body responded to a notice of an alleged violation of this subchapter in a timely manner under subsection (b) of this section; or
(2) the public body cured the violation in accordance with subsection (b) of this section. (Amended 1979, No. 151 (Adj. Sess.), § 4, eff. April 24, 1980; 1987, No. 256 (Adj. Sess.), § 5; 2013, No. 143 (Adj. Sess.), § 4; 2015, No. 129 (Adj. Sess.), § 2, eff. May 24, 2016; 2017, No. 113 (Adj. Sess.), § 1.)
Subchapter 3: Access To Public Records
§ 315. Statement of policy; short title
(a) It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer. Consistent with these principles, the General Assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed to implement this policy, and the burden of proof shall be on the public agency to sustain its action.
(b) The General Assembly finds that public records are essential to the administration of State and local government. Public records contain information that allows government programs to function, provides officials with a basis for making decisions, and ensures continuity with past operations. Public records document the legal responsibilities of government, help protect the rights of citizens, and provide citizens a means of monitoring government programs and measuring the performance of public officials. Public records provide documentation for the functioning of government and for the retrospective analysis of the development of Vermont government and the impact of programs on citizens.
(c) This subchapter may be known and cited as the Public Records Act or the PRA. (Added 1975, No. 231 (Adj. Sess.), § 1; amended 2011, No. 59, § 1; 2015, No. 29, § 1; 2017, No. 166 (Adj. Sess.), § 2.)
§ 316. Access to public records and documents
(a) Any person may inspect or copy any public record of a public agency, as follows:

(1) For any agency, board, department, commission, committee, branch, instrumentality, or authority of the State, a person may inspect a public record on any day other than a Saturday, Sunday, or a legal holiday, between the hours of nine o'clock and 12 o'clock in the forenoon and between one o'clock and four o'clock in the afternoon.
(2) For any agency, board, committee, department, instrumentality, commission, or authority of a political subdivision of the State, a person may inspect a public record during customary business hours.
(b) If copying equipment maintained for use by a public agency is used by the agency to copy the public record or document requested, the agency may charge and collect from the person requesting the copy the actual cost of providing the copy. The agency may also charge and collect from the person making the request, the costs associated with mailing or transmitting the record by facsimile or other electronic means. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of public records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.
(c) Unless otherwise provided by law, in the following instances an agency may also charge and collect the cost of staff time associated with complying with a request for a copy of a public record: (1) the time directly involved in complying with the request exceeds 30 minutes; (2) the agency agrees to create a public record; or (3) the agency agrees to provide the public record in a nonstandard format and the time directly involved in complying with the request exceeds 30 minutes. The agency may require that requests subject to staff time charges under this subsection be made in writing and that all charges be paid, in whole or in part, prior to delivery of the copies. Upon request, the agency shall provide an estimate of the charge.
(d) The Secretary of State, after consultation with the Secretary of Administration, shall establish the actual cost of providing a copy of a public record that may be charged by State agencies. The Secretary shall also establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine "actual cost," the Secretary shall consider the following only: the cost of the paper or the electronic media onto which a public record is copied, a prorated amount for maintenance and replacement of the machine or equipment used to copy the record, and any utility charges directly associated with copying a record. The Secretary of State shall adopt, by rule, a uniform schedule of public record charges for State agencies.
(e) After public hearing, the legislative body of a political subdivision shall establish actual cost charges for copies of public records. The legislative body shall also establish the amount that may be charged for staff time, when such a charge is authorized under this section. To determine actual cost charges, the legislative body shall use the same factors used by the Secretary of State. If a legislative body fails to establish a uniform schedule of charges, the charges for that political subdivision shall be the uniform schedule of charges established by the Secretary of State until the local legislative body establishes such a schedule. A schedule of public records charges shall be posted in prominent locations in the town offices.
(f) State agencies shall provide receipts for all monies received under this section. Notwithstanding any provision of law to the contrary, a State agency may retain monies collected under this section to the extent such charges represent the actual cost incurred to provide copies under this subchapter. Amounts collected by a State agency under this section for the cost of staff time associated with providing copies shall be deposited in the General Fund, unless another disposition or use of revenues received by that agency is specifically authorized by law. Charges collected under this section shall be deposited in the agency's operating account or the General Fund, as appropriate, on a monthly basis or whenever the amount totals $100.00, whichever occurs first.
(g) A public agency having the equipment necessary to copy its public records shall utilize its equipment to produce copies. If the public agency does not have such equipment, nothing in this section shall be construed to require the public agency to provide or arrange for copying service, to use or permit the use of copying equipment other than its own, to permit operation of its copying equipment by other than its own personnel, to permit removal of the public record by the requesting person for purposes of copying, or to make its own personnel available for making handwritten or typed copies of the public record or document requested.
(h) Standard formats for copies of public records shall be as follows: for copies in paper form, a photocopy of a paper public record or a hard copy print-out of a public record maintained in electronic form; for copies in electronic form, the format in which the record is maintained. Any format other than the formats described in this subsection is a nonstandard format.
(i) If an agency maintains public records in an electronic format, nonexempt public records shall be available for copying in either the standard electronic format or the standard paper format, as designated by the party requesting the records. An agency may, but is not required to, provide copies of public records in a nonstandard format, to create a public record, or to convert paper public records to electronic format.

(j) A public agency may make reasonable rules to prevent disruption of operations, to preserve the security of public records or documents, and to protect them from damage.
(k) Information concerning facilities and sites for the treatment, storage, and disposal of hazardous waste shall be made available to the public under this subchapter in substantially the same manner and to the same degree as such information is made available under the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. chapter 82, subchapter 3, and the Federal Freedom of Information Act, 5 U.S.C. section 552 et seq. In the event of a conflict between the provisions of this subchapter and the cited federal laws, federal law shall govern. (Added 1975, No. 231 (Adj. Sess.), § 1; amended 1987, No. 85, § 5, eff. June 9, 1987; 1995, No. 159 (Adj. Sess.), § 1; 2003, No. 158 (Adj. Sess.), § 4; 2011, No. 59, § 2.)

§ 317. Definitions; public agency; public records and documents; exemptions

(a) As used in this subchapter:
(1) "Business day" means a day that a public agency is open to provide services.
(2) "Public agency" or "agency" means any agency, board, department, commission, committee, branch, instrumentality, or authority of the State or any agency, board, committee, department, branch, instrumentality, commission, or authority of any political subdivision of the State.
(b) As used in this subchapter, "public record" or "public document" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public agency business. Individual salaries and benefits of and salary schedules relating to elected or appointed officials and employees of public agencies shall not be exempt from public inspection and copying.
(c) The following public records are exempt from public inspection and copying:
(1) Records which by law are designated confidential or by a similar term.
(2) Records which by law may only be disclosed to specifically designated persons.
(3) Records which, if made public pursuant to this subchapter, would cause the custodian to violate duly adopted standards of ethics or conduct for any profession regulated by the State.
(4) Records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege other than the common law deliberative process privilege as it applies to the General Assembly and the Executive Branch agencies of the State of Vermont.
(5)(A) Records dealing with the detection and investigation of crime, but only to the extent that the production of such records:
(i) could reasonably be expected to interfere with enforcement proceedings;
(ii) would deprive a person of a right to a fair trial or an impartial adjudication;
(iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy;
(iv) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;
(v) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecution if such disclosure could reasonably be expected to risk circumvention of the law;
(vi) could reasonably be expected to endanger the life or physical safety of any individual.
(B) Notwithstanding subdivision (A) of this subdivision (5), records relating to management and direction of a law enforcement agency; records reflecting the initial arrest of a person, including any ticket, citation, or complaint issued for a traffic violation, as that term is defined in 23 V.S.A. § 2302; and records reflecting the charge of a person shall be public.
(C) It is the intent of the General Assembly that in construing subdivision (A) of this subdivision (5), the courts of this State will be guided by the construction of similar terms contained in 5 U.S.C. § 552(b)(7) (Freedom of Information Act) by the courts of the United States.
(D) It is the intent of the General Assembly that, consistent with the manner in which courts have interpreted subdivision (A) of this subdivision (5), a public agency shall not reveal information that could be used to facilitate the commission of a crime or the identity of a private individual who is a witness to or victim of a crime, unless withholding the identity or information would conceal government wrongdoing. A record shall not be withheld in its entirety because it contains identities or information that have been redacted pursuant to this subdivision.

(6) A tax return and related documents, correspondence, and certain types of substantiating forms which include the same type of information as in the tax return itself filed with or maintained by the Vermont Department of Taxes or submitted by a person to any public agency in connection with agency business.
(7) Personal documents relating to an individual, including information in any files maintained to hire, evaluate, promote, or discipline any employee of a public agency, information in any files relating to personal finances, medical or psychological facts concerning any individual or corporation; provided, however, that all information in personnel files of an individual employee of any public agency shall be made available to that individual employee or his or her designated representative.
(8) Test questions, scoring keys, and other examination instruments or data used to administer a license, employment, or academic examination.
(9) Trade secrets, meaning confidential business records or information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which a commercial concern makes efforts that are reasonable under the circumstances to keep secret, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it, except that the disclosures required by 18 V.S.A. § 4632 are not exempt under this subdivision.
(10) Lists of names compiled or obtained by a public agency when disclosure would violate a person's right to privacy or produce public or private gain; provided, however, that this section does not apply to lists which are by law made available to the public, or to lists of professional or occupational licensees.
(11) Student records, including records of a home study student; provided, however, that such records shall be made available upon request under the provisions of the Federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, as may be amended.
(12) Records concerning formulation of policy where such would constitute a clearly unwarranted invasion of personal privacy, if disclosed.
(13) Information pertaining to the location of real or personal property for public agency purposes prior to public announcement of the project and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts thereof.
(14) Records which are relevant to litigation to which the public agency is a party of record, provided all such matters shall be available to the public after ruled discoverable by the court before which the litigation is pending, but in any event upon final termination of the litigation.
(15) Records relating specifically to negotiation of contracts, including collective bargaining agreements with public employees.
(16) Any voluntary information provided by an individual, corporation, organization, partnership, association, trustee, estate, or any other entity in the State of Vermont, which has been gathered prior to the enactment of this subchapter, shall not be considered a public document.
(17) Records of interdepartmental and intradepartmental communications in any county, city, town, village, town school district, incorporated school district, union school district, consolidated water district, fire district, or any other political subdivision of the State to the extent that they cover other than primarily factual materials and are preliminary to any determination of policy or action or precede the presentation of the budget at a meeting held in accordance with section 312 of this title.
(18) Records of the Office of Internal Investigation of the Department of Public Safety, except as provided in 20 V.S.A. § 1923.
(19) Records relating to the identity of library patrons or the identity of library patrons in regard to library patron registration records and patron transaction records in accordance with 22 V.S.A. chapter 4.
(20) Information that would reveal the location of archaeological sites and underwater historic properties, except as provided in 22 V.S.A. § 761.
(21) Lists of names compiled or obtained by Vermont Life magazine for the purpose of developing and maintaining a subscription list, which list may be sold or rented in the sole discretion of Vermont Life magazine, provided that such discretion is exercised in furtherance of that magazine's continued financial viability, and is exercised pursuant to specific guidelines adopted by the editor of the magazine.
(22) [Repealed.]
(23) Any data, records, or information produced or acquired by or on behalf of faculty, staff, employees, or students of the University of Vermont or the Vermont State Colleges in the conduct of study, research, or creative efforts on medical, scientific, technical, scholarly, or artistic matters, whether such activities are sponsored alone by the institution

or in conjunction with a governmental body or private entity, until such data, records, or information are published, disclosed in an issued patent, or publicly released by the institution or its authorized agents. This subdivision applies to, but is not limited to, research notes and laboratory notebooks, lecture notes, manuscripts, creative works, correspondence, research proposals and agreements, methodologies, protocols, and the identities of or any personally identifiable information about participants in research. This subdivision shall not exempt records, other than research protocols, produced or acquired by an institutional animal care and use committee regarding the committee's compliance with State law or federal law regarding or regulating animal care.

(24) Records of, or internal materials prepared for, the deliberations of any public agency acting in a judicial or quasi-judicial capacity.

(25) Passwords, access codes, user identifications, security procedures, and similar information the disclosure of which would threaten the safety of persons or the security of public property.

(26) Information and records provided to the Department of Financial Regulation by a person for the purposes of having the Department assist that person in resolving a dispute with any person regulated by the Department, and any information or records provided by a person in connection with the dispute.

(27) Information and records provided to the Department of Public Service or the Public Utility Commission by an individual for the purposes of having the Department or Commission assist that individual in resolving a dispute with a utility regulated by the Department or Commission, or by the utility or any other person in connection with the individual's dispute.

(28) Records of, and internal materials prepared for, independent external reviews of health care service decisions pursuant to 8 V.S.A. § 4089f and of mental health care service decisions pursuant to 8 V.S.A. § 4089a.

(29) The records in the custody of the Secretary of State of a participant in the Address Confidentiality Program described in 15 V.S.A. chapter 21, subchapter 3, except as provided in that subchapter.

(30) All State-controlled database structures and application code, including the vermontvacation.com website and Travel Planner application, which are
known only to certain State departments engaging in marketing activities and which give the State an opportunity to obtain a marketing advantage over any other state, regional, or local governmental or nonprofit quasi-governmental entity, or private sector entity, unless any such State department engaging in marketing activities determines that the license or other voluntary disclosure of such materials is in the State's best interests.

(31) Records of a registered voter's month and day of birth, driver's license or nondriver identification number, telephone number, e-mail address, and the last four digits of his or her Social Security number contained in a voter registration application or the statewide voter checklist established under 17 V.S.A. § 2154 or the failure to register to vote under 17 V.S.A. § 2145a.

(32) With respect to publicly owned, managed, or leased structures, and only to the extent that release of information contained in the record would present a substantial likelihood of jeopardizing the safety of persons or the security of public property, final building plans, and as-built plans, including drafts of security systems within a facility, that depict the internal layout and structural elements of buildings, facilities, infrastructures, systems, or other structures owned, operated, or leased by an agency before, on, or after the effective date of this provision; emergency evacuation, escape, or other emergency response plans that have not been published for public use; and vulnerability assessments, operation and security manuals, plans, and security codes. For purposes of this subdivision, "system" shall include electrical, heating, ventilation, air conditioning, telecommunication, elevator, and security systems. Information made exempt by this subdivision may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities; to a licensed architect, engineer, or contractor who is bidding on or performing work on or related to buildings, facilities, infrastructures, systems, or other structures owned, operated, or leased by the State. The entities or persons receiving such information shall maintain the exempt status of the information. Such information may also be disclosed by order of a court of competent jurisdiction, which may impose protective conditions on the release of such information as it deems appropriate. Nothing in this subdivision shall preclude or limit the right of the General Assembly or its committees to examine such information in carrying out its responsibilities or to subpoena such information. In exercising the exemption set forth in this subdivision and denying access to information requested, the custodian of the information shall articulate the grounds for the denial.

(33) The account numbers for bank, debit, charge, and credit cards held by an agency or its employees on behalf of the agency.

(34) Affidavits of income and assets as provided in 15 V.S.A. § 662 and Rule 4 of the Vermont Rules for Family Proceedings.

(35) [Repealed.]
(36) Anti-fraud plans and summaries submitted for the purposes of complying with 8 V.S.A. § 4750.
(37) Records provided to the Department of Health pursuant to the Patient Safety Surveillance and Improvement System established by 18 V.S.A. chapter 43a.
(38) Records that include prescription information containing data that could be used to identify a prescriber, except that the records shall be made available upon request for medical research, consistent with and for purposes expressed in 18 V.S.A. § 4622 or 9410, 18 V.S.A. chapter 84 or 84A, and for other law enforcement activities.
(39) Records held by the Agency of Human Services or the Department of Financial Regulation, which include prescription information containing patient identifiable data, that could be used to identify a patient.
(40) Records of genealogy provided in an application or in support of an application for tribal recognition pursuant to chapter 23 of this title.
(41) Documents reviewed by the Victims Compensation Board for purposes of approving an application for compensation pursuant to 13 V.S.A. chapter 167,except as provided by 13 V.S.A. §§ 5358a(b) and 7043(c).
(42) Except as otherwise provided by law, information that could be used to identify a complainant who alleges that a public agency, a public employee or official, or a person providing goods or services to a public agency under contract has engaged in a violation of law, or in waste, fraud, or abuse of authority, or in an act creating a threat to health or safety, unless the complainant consents to disclosure of his or her identity.
(d)(1) On or before December 1, 2015, the Office of Legislative Council shall compile lists of all Public Records Act exemptions found in the Vermont Statutes Annotated, one of which shall be arranged by subject area, and the other in order by title and section number.
(2) On or before December 1, 2019, the Office of Legislative Council shall compile a list arranged in order by title and section number of all Public Records Act exemptions found in the Vermont Statutes Annotated that are repealed, or are narrowed in scope, on or after January 1, 2019. The list shall indicate:
(A) the effective date of the repeal or narrowing in scope of the exemption; and
(B) whether or not records produced or acquired during the period of applicability of the repealed or narrowed exemption are to remain exempt following the repeal or narrowing in scope.
(3) The Office of Legislative Council shall update the lists required under subdivisions (1) and (2) of this subsection no less often than every two years. In compiling and updating these lists, the Office of Legislative Council shall consult with the Office of Attorney General. The lists, and any updates thereto, shall be posted in a prominent location on the websites of the General Assembly, the Secretary of State's Office, the Attorney General's Office, and the State Library, and shall be sent to the Vermont League of Cities and Towns.
(e)(1) For any exemption to the Public Records Act enacted or substantively amended in legislation introduced in the General Assembly in 2019 or later, in the fifth year after the effective date of the enactment, reenactment, or substantive amendment of the exemption, the exemption shall be repealed on July 1 of that fifth year except if the General Assembly reenacts the exemption prior to July 1 of the fifth year or if the law otherwise requires.
(2) Legislation that enacts, reenacts, or substantively amends an exemption to the Public Records Act shall explicitly provide for its repeal on July 1 of the fifth year after the effective date of the exemption unless the legislation specifically provides otherwise.
(f) Unless otherwise provided by law, a record produced or acquired during the period of applicability of an exemption that is subsequently repealed or narrowed in scope shall, if exempt during that period, remain exempt following the repeal or narrowing in scope of the exemption. (Added 1975, No. 231 (Adj. Sess.), § 1; amended 1977, No. 202 (Adj. Sess.); 1979, No. 156 (Adj. Sess.), § 6; 1981, No. 227 (Adj. Sess.), § 4; 1989, No. 28, § 2; 1989, No. 136 (Adj. Sess.), § 1; 1995, No. 46, §§ 23, 58; 1995, No. 159 (Adj. Sess.), § 2; No. 167 (Adj. Sess.), § 29; No. 182 (Adj. Sess.), § 21, eff. May 22, 1996; No. 180 (Adj. Sess.), § 38; No. 190 (Adj. Sess.), § 1(a); 1997, No. 159 (Adj. Sess.), § 12, eff. April 29, 1998; 1999, No. 134 (Adj. Sess.), § 3, eff. Jan. 1, 2001; 2001, No. 28, § 9, eff. May 21, 2001; 2001, No. 76 (Adj. Sess.), § 3, eff. Feb. 19, 2002; No. 78 (Adj. Sess.), § 1, eff. Apr. 3, 2002; 2003, No. 59, § 1, eff. Jan. 1, 2006; 2003, No. 63, § 29, eff. June 11, 2003; 2003, No. 107 (Adj. Sess.), § 14; 2003, No. 146 (Adj. Sess.), § 6, eff. Jan. 1, 2005; 2003, No. 158 (Adj. Sess.), § 2; 2003, No. 159 (Adj. Sess.), § 12; 2005, No. 132 (Adj. Sess.), § 1; 2005, No. 179 (Adj. Sess.), § 3; 2005, No. 215 (Adj. Sess.), § 326; 2007, No. 80, § 18; 2007, No. 110 (Adj. Sess.), § 3; 2007, No. 129 (Adj. Sess.), § 2; 2009, No. 59, § 5; 2009, No. 107 (Adj. Sess.), § 5, eff. May 14, 2010; 2011, No. 59, § 3; 2011, No. 78 (Adj. Sess.), § 2, eff. April 2, 2012; 2011, No. 145 (Adj. Sess.), § 8, eff. May 15, 2012; 2013, No. 70, § 1; 2013, No. 129 (Adj. Sess.), § 1; 2013, No. 194 (Adj. Sess.), § 1, eff. June 17, 2014; 2015, No. 23, § 2; 2015, No. 29, §§ 2, 3, 6, 23; 2015, No. 30, § 3, eff. May 26, 2015; 2015, No. 80 (Adj. Sess.), §

6, eff. July 1, 2017; 2017, No. 50, § 5; 2017, No. 128 (Adj. Sess.), § 2, eff. May 16, 2018; 2017, No. 166 (Adj. Sess.), § 3, eff. Jan. 1, 2019; 2019, No. 31, § 16.)

§ 317a. Management of public records

(a)(1) Public records in general and archival records in particular should be systematically managed to provide ready access to vital information, to promote the efficient and economical operation of government, and to preserve their legal, administrative, and informational value.

(2) Any public agency may seek services from the Statewide Records and Information Management Program, as defined in 3 V.S.A. § 117(b) and administered by the Vermont State Archives and Records Administration, to establish, maintain, and implement an active and continuing internal records and information management program for the agency.

(b) A custodian of public records shall not destroy, give away, sell, discard, or damage any record or records in his or her charge, unless specifically authorized by law or under a record schedule, as defined in 3 V.S.A. § 117(a)(6), that has been approved by the State Archivist. (Added 2007, No. 96 (Adj. Sess.), § 1; amended 2017, No. 100 (Adj. Sess.), § 2.)

§ 318. Procedure

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

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

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

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

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

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

(2) If the custodian considers the record to be exempt from inspection and copying under the provisions of this subchapter, the custodian shall promptly so certify in writing. The certification shall:

(A) identify the records withheld;

(B) include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial;

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

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

(3) [Repealed.]

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

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

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

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

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

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

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

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

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

(C) notification of the provisions for judicial review of the determination under section 319 of this title.
(3) If the head of the agency reverses the denial of a request for records, the records shall be promptly made available to the person making the request.
(d) In responding to a request to inspect or copy a record under this subchapter, a public agency shall consult with the person making the request in order to clarify the request or to obtain additional information that will assist the public agency in responding to the request and, when authorized by this subchapter, in facilitating production of the requested record for inspection or copying. In unusual circumstances, as that term is defined in subdivision (b)(5) of this section, a public agency may request that a person seeking a voluminous amount of separate and distinct records narrow the scope of a public records request.
(e) A public agency shall not withhold any record in its entirety on the basis that it contains some exempt content if the record is otherwise subject to disclosure; instead, the public agency shall redact the information it considers to be exempt and produce the record accompanied by an explanation of the basis for denial of the redacted information.
(f) If a person making the request has a disability that requires accommodation to gain equal access to the public record sought, the person shall notify the public agency of the type of accommodation requested. The public agency shall give primary consideration to the accommodation choice expressed by the requestor, but may propose an alternative accommodation so long as it achieves equal access. The public agency shall provide accommodation to the person making the request unless the agency can demonstrate that accommodation would result in a fundamental alteration in the nature of its service, programs, activities, or in undue financial and administrative burden.
(g) The Secretary of State shall provide municipal public agencies and members of the public information and advice regarding the requirements of the Public Records Act and may utilize informational websites, toll-free telephone numbers, or other methods to provide such information and advice.
(h) The head of a State agency or department shall:
(1) designate the agency's or department's records officer described in 3 V.S.A. § 218, or shall designate some other person, to be accountable for overseeing the processing of requests for public records received by the agency or department in accordance with this section; and
(2) post on the agency's or department's website the name and contact information of the person designated under subdivision (1) of this subsection. (Added 1975, No. 231 (Adj. Sess.), § 1; amended 2005, No. 132 (Adj. Sess.), § 2; 2007, No. 110 (Adj. Sess.), § 1; 2011, No. 59, § 4; 2017, No. 166 (Adj. Sess.), § 5; 2019, No. 14, § 1, eff. April 30, 2019.)
§ 318a. Executive Branch Agency Public Records Request System
(a) The Secretary of Administration shall maintain and update the Public Records Request System established pursuant to 2006 Acts and Resolves No. 132, Sec. 3 and 2011 Acts and Resolves No. 59, Sec. 13 with the information furnished under subsection (b) of this section and post System information on the website of the Agency of Administration.
(b) All public agencies of the Executive Branch of the State:
(1) that receive a written request to inspect or copy a record under this subchapter shall catalogue the request in the Public Records Request System established and maintained by the Secretary of Administration by furnishing the following information:
(A) the date the request was received;
(B) the agency that received the request;
(C) the person that made the request, including a contact name;
(D) the status of the request, including whether the request was fulfilled in whole, fulfilled in part, or denied;
(E) if the request was fulfilled in part or denied, the exemption or other grounds asserted as the basis for partial fulfillment or denial;
(F) the estimated hours necessary to respond to the request;
(G) the date the agency closed the request; and
(H) the elapsed time between receipt of the request and the date the agency closed the request; and
(2) shall post in a conspicuous location on their respective websites a link to the location on the Agency of Administration's website where Public Records Request System information is maintained. (Added 2017, No. 166 (Adj. Sess.), § 6.)
§ 319. Enforcement
(a) Any person aggrieved by the denial of a request for public records under this subchapter may apply to the Civil Division of the Superior Court in the county in which the complainant resides, or has his or her personal place of business, or in which the public records are situated, or in the Civil Division of the Superior Court of Washington County, to enjoin the public agency from withholding agency records and to order the production of any agency records

improperly withheld from the complainant. In such a case, the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in section 317 of this title, and the burden of proof shall be on the public agency to sustain its action.
(b) Except as to cases the court considers of greater importance, proceedings before the Civil Division of the Superior Court, as authorized by this section, and appeals there from, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.
(c) If the public agency can show the court that exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records.
(d)(1) Except as provided in subdivision (2) of this subsection, the court shall assess against the public agency reasonable attorney's fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.
(2) The court may, in its discretion, assess against a public agency reasonable attorney's fees and other litigation costs reasonably incurred in a case under this section in which the complainant has substantially prevailed provided that the public agency, within the time allowed for service of an answer under V.R.C.P.
12(a)(1):
(A) concedes that a contested record or contested records are public; and
(B) provides the record or records to the complainant.
(3) The court may assess against the complainant reasonable attorney's fees and other litigation costs reasonably incurred in any case under this section when the court finds that the complainant has violated V.R.C.P. 11. (Added 1975, No. 231 (Adj. Sess.), § 1; amended 2011, No. 59, § 5.)
§ 320. Penalties
(a) Whenever the court orders the production of any public agency records, improperly withheld from the complainant and assesses against the agency reasonable attorney's fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether the agency personnel acted arbitrarily or capriciously with respect to the withholding, the Department of Human Resources if applicable to that employee, shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Department, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his or her representative. The administrative authority shall take the corrective action that the Department recommends.
(b) In the event of noncompliance with the order of the court, the Civil Division of the Superior Court may punish for contempt the responsible employee or official, and in the case of a uniformed service, the responsible member.
(c) A person who willfully destroys, gives away, sells, discards, or damages a public record without having authority to do so shall be fined at least $50.00 but not more than $1,000.00 for each offense. (Added 1975, No. 231 (Adj. Sess.), § 1; amended 2003, No. 156 (Adj. Sess.), § 15; 2007, No. 96 (Adj. Sess.), § 2; 2011, No. 59, § 6.)
Subchapter 5: Interpreters For Judicial, Administrative, And Legislative Findings
§ 331. Definitions
As used in this subchapter:
(1) "Person who is deaf or hard of hearing" means any person who has such difficulty hearing, even with amplification, that he or she cannot rely on hearing for communication.
(2) "Proceeding" means any judicial proceeding, contested case under 3 V.S.A. chapter 25, or other hearing before an administrative agency not included under 3 V.S.A. chapter 25.
(3) "Qualified interpreter" means an interpreter for a person who is deaf or hard of hearing who meets standards of competency established by the national or Vermont Registry of Interpreters for the Deaf as amended, by rule, by the Vermont Commission of the Deaf and Hard of Hearing. (Added 1987, No. 172 (Adj. Sess.), § 1; amended 2005, No. 167 (Adj. Sess.), § 11, eff. May 20, 2006; 2013, No. 96 (Adj. Sess.), § 3.)
§ 332. Right to interpreter; assistive listening equipment
(a) Any person who is deaf or hard of hearing who is a party or witness in any proceeding shall be entitled to be provided with a qualified interpreter for the duration of the person's participation in the proceeding.
(b) Any person who is deaf or hard of hearing shall be entitled to be provided with a qualified interpreter upon five working days' notice that the person has reasonable need to do any of the following:

(1) transact business with any State board or agency;
(2) participate in any State-sponsored activity, including public hearings, conferences, and public meetings;
(3) participate in any official State legislative activities.
(c) If a person who is deaf or hard of hearing is unable to use or understand sign language, the presiding officer or State board or agency or State legislative official shall, upon five working days' notice, make available appropriate assistive listening equipment for use during the proceeding or activity. (Added 1987, No. 172 (Adj. Sess.), § 1; amended 2005, No. 167 (Adj. Sess.), § 12, eff. May 20, 2006; 2013, No. 96 (Adj. Sess.), § 3.)

§ 333. Appointment of interpreter

(a) The presiding officer in a proceeding shall appoint an interpreter after making a preliminary determination that the interpreter is able to readily communicate with the person who is deaf or hard of hearing, to accurately interpret statements or communications from the person who is deaf or hard of hearing, and to interpret the proceedings to the person who is deaf or hard of hearing.
(b) The presiding officer shall make findings when appointing an interpreter not designated as a qualified interpreter.
(c) It shall be a rebuttable presumption that the requirements of this section are met if the interpreter proposed for appointment is a qualified interpreter. It shall also be a rebuttable presumption that the requirements of this section are not met if the interpreter proposed for appointment is not a qualified interpreter. (Added 1987, No. 172 (Adj. Sess.), § 1; amended 2005, No. 167 (Adj. Sess.), § 13, eff. May 20, 2006; 2013, No. 96 (Adj. Sess.), § 3.)

§ 334. Waiver

No privilege recognized by law may be deemed waived or made inapplicable by reason that a communication was made through an interpreter. (Added 1987, No. 172 (Adj. Sess.), § 1.)

§ 335. Compensation

An interpreter appointed under section 332 of this title is entitled to receive a reasonable fee for services, together with reimbursement of actual and necessary expenses, including travel and lodging expenses. In civil proceedings, the Court may order that costs of the interpreter be paid by a party, as justice may require, or it may order that the costs be paid by the State. In criminal proceedings, costs of the interpreter shall be paid by the State. An interpreter used in connection with administrative proceedings, transacting State business or State-sponsored activities shall be provided at the expense of the agency involved. An interpreter used in connection with official State legislative activities shall be provided at the expense of the legislature. (Added 1987, No. 172 (Adj. Sess.), § 1.)

§ 336. Rules; information; list of interpreters

(a) The Vermont Commission of the Deaf and Hard of Hearing shall, by rule, establish factors to be considered by the presiding officer under section 333 of this title before appointing an interpreter who is not a qualified interpreter. Such factors shall encourage the widest availability of interpreters in Vermont while at the
same time ensuring that the interpreter:
(1) is able to communicate readily with the person who is deaf or hard of hearing;
(2) is able to interpret accurately statements or communications by the person who is deaf or hard of hearing;
(3) is able to interpret the proceedings to the person who is deaf or hard of hearing;
(4) shall maintain confidentiality;
(5) shall be impartial with respect to the outcome of the proceeding;
(6) shall not exert any influence over the person who is deaf or hard of hearing; and
(7) shall not accept assignments the interpreter does not feel competent to handle.
(b) Rules established by the Vermont Commission of the Deaf and Hard of Hearing pursuant to subdivision 331(3) of this title amending the standards of competency established by the national or Vermont Registry of the Deaf shall be limited to the factors set forth in subsection (a) of this section.
(c) The Vermont Commission of the Deaf and Hard of Hearing shall prepare an explanation of the provisions of this subchapter which shall be distributed to all State agencies and courts.
(d) The Department of Disabilities, Aging, and Independent Living shall maintain a list of qualified interpreters in Vermont and, where such information is available, in surrounding states. The list shall be distributed to all State agencies and courts. (Added 1987, No. 172 (Adj. Sess.), § 1; amended 2005, No. 167 (Adj. Sess.), § 14, eff. May 20, 2006; 2013, No. 96 (Adj. Sess.), § 3.)

§ 337. Review

(a) A decision, order, or judgment of a court or administrative agency may be reversed on appeal if the court or agency finds that a person who is deaf or hard of hearing who was a party or a witness in the proceeding was deprived of an opportunity to communicate effectively, and that the deprivation was prejudicial.

(b) Any person denied a qualified interpreter under subsection 332(b) of this title, may appeal the denial through the administrative appeals process for the agency involved or, where no such administrative appeals process exists, through the Superior Court in the county in which the denial occurred or in Washington Superior Court. (Added 1987, No. 172 (Adj. Sess.), § 1; amended 2005, No. 167 (Adj. Sess.), § 15, eff. May 20, 2006; 2013, No. 96 (Adj. Sess.), § 3.)

§ 338. Admissions; confessions

(a) An admission or confession by a person who is deaf or hard of hearing made to a law enforcement officer or any other person having a prosecutorial function may only be used against the person in a criminal proceeding if:

(1) The admission or confession was made knowingly, voluntarily, and intelligently and is not subject to alternative interpretations resulting from the person's habits and patterns of communication.

(2) The admission or confession, if made during a custodial interrogation, was made after reasonable steps were taken, including the appointment of a qualified interpreter, to ensure that the defendant understood his or her constitutional rights.

(b) The provisions of subsection (a) of this section supplement the constitutional rights of the person who is deaf or hard of hearing. (Added 1987, No. 172 (Adj. Sess.), § 1; amended 2005, No. 167 (Adj. Sess.), § 16, eff. May 20, 2006; 2013, No. 96 (Adj. Sess.), § 3.)

§ 339. Communications made to interpreters; prohibition on disclosure

(a) An interpreter, whether or not the interpreter is a qualified interpreter, shall not disclose or testify to:

(1) a communication made by a person to an interpreter acting in his or her capacity as an interpreter for a person who is deaf or hard of hearing or a person with limited English proficiency; or

(2) any information obtained by the interpreter while acting in his or her capacity as an interpreter for a person who is deaf or hard of hearing or a person with limited English proficiency.

(b) There is no prohibition on disclosure under this section if the services of the interpreter were sought or obtained to enable or aid anyone to commit or plan to commit what the person who is deaf or hard of hearing or the person with limited English proficiency knew or reasonably should have known to be a crime or fraud.

(c)(1) This section shall not be construed to limit or expand the effect of section 334 of this title.

(2) This section shall not be construed to alter or affect the mandatory reporting requirements of 33 V.S.A. § 4913.

(d) As used in this section, "person with limited English proficiency" means a person who does not speak English as his or her primary language and who has a limited ability to read, write, speak, or understand English. (Added 2003, No. 142 (Adj. Sess.), § 1; amended 2005, No. 167 (Adj. Sess.), § 10, eff. May 20, 2006; 2013, No. 96 (Adj. Sess.), § 3.)