



**State of Vermont
Office of the Secretary of State**

128 State Street
Montpelier, VT 05633-1101
(802) 828-2363

**Sarah Copeland Hanzas, Secretary of State
S. Lauren Hibbert, Deputy Secretary**

January 23, 2024

**To: Hon. Ruth Hardy, Chair
Senate Committee on Government Operations**

From: S. Lauren Hibbert, Deputy Secretary of State

Re: S.55 An act relating to authorizing public bodies to meet electronically under Vermont's Open Meeting Law

Thank you for the opportunity to talk to your committee about the changes to the Open Meeting Law. An open and transparent government is the cornerstone of democracy. In this political climate, protecting democracy, in ways large and small, is essential. For many, local politics and local conversations are where faith in our democracy is restored. Additionally, local and state decisions are frequently the most impactful decisions on Vermonters' day-to-day lives.

S. 55 is reforming the Open Meeting Law (OML) substantially, and we believe it reflects the way government is conducting business in this modern era. The COVID exception bills, of which we are now in our third iteration, allowed for several substantial changes to the OML. Prior to those temporary changes, the OML has been consistent and steady. The Secretary of State's Office is hopeful that we can take the best of what we learned during the pandemic and apply that to the long-standing provisions that allow for open access to our government.

Section-by-Section Review and Comments:

Sec. 1: The Secretary of State's Office is in support of the definition of the "Advisory Body." It provides significant guidance to public bodies on which types of public bodies do not need to have a physical location. One topic that arose out of testimony is whether "sub-groups" or "sub-committees" of a "Non-Advisory Body" are required to have a physical location. The Secretary of State believes this is ultimately a policy decision of the legislature but would recommend that clarification of this question is resolved in Section 1.

Sec. 2: The Secretary of State supports the changes in Section 2. A mandate for hybrid meetings will pose challenges for some communities given restraints on technology spending. It is for this reason that we support Section 6. The Secretary of State would support language making it clear that the public should have full participation for the duration of the public meeting, excluding executive sessions. For proposed 1 V.S.A. § 312(a)(7), we recommend the following:

(7) Video recordings of electronic meetings. A public body, other than an advisory body, shall electronically record all electronic and hybrid meetings conducted pursuant to this subsection. The audiovisual recording of a meeting shall be posted in a designated electronic location until the public body approves and posts the official minutes for that meeting. The public body shall retain audiovisual recordings of electronic and hybrid meetings for one year.

We are recommending the removal of retention for one year of video recordings due to the administrative cost and burden and the longstanding understanding that approved minutes are the reflection of the meeting.

This section also mandates that public bodies record all electronic and hybrid meetings. As Tanya Marshall, Vermont's State Archivist, and the Director of VSARA, testified last week, this is a policy decision that should be debated. The Open Meeting Law has been about participation, discussion, and decision-making for those in attendance at the meeting. Historically, recordings have been created for notetaking and accuracy in preparing minutes. There needs to be a clear understanding of what is separate and distinct between an electronic meeting vs. a hybrid meeting vs. an in-person meeting that differentiates which of these should be recorded. Also, the purpose of the recording should be understood: Is the purpose to prepare the minutes? Is the purpose to enable individuals to view previous meetings? Or to prepare for a meeting an individual may have missed?

Sec. 3: The Secretary of State's Office supports the inclusion of a "local incident" as a reason that a public body could go fully remote; however, we are concerned that this could be abused. We recommend that the circumstances around this are clearly defined and that it is clear who can decide when a "local incident" is occurring.

Sec. 4: The Secretary of State's Office is concerned about the changes to the Annual Meeting found in Section 4. Our office is aware of the public access issues related to Annual Meeting and the associated meetings. We think this conversation needs to involve multiple stakeholders because of the substantial changes and complexities that will arise. Our position is that this should be allowable for an informational meeting but that without more parameters a hybrid meeting should not be used for voting. For instance, how would a town know if someone was a registered voter if they only appeared by cell phone? Additionally, an ordinary floor vote is decided on an assessment of the yeas and nays. It seems difficult to do that in a hybrid setting. We recommend more discussion around this provision.

Sec. 5: The Secretary of State's Office firmly believes that best practices should be published for electronic, hybrid, and in-person meetings. We do not believe we are the sole experts on this topic. If we continue to be tasked with this work, we will rely heavily upon the partners in the bill. We would recommend the inclusion of the CCTVs and the Attorney General's Office. If there is another stakeholder who wants to spearhead this project, the Secretary of State's office would be an active partner for them.

Sec. 6: The Secretary of State's Office is looking forward to administering the Open Meeting Grant Program. We would ask that the Joint Fiscal Office and the League of Cities and Towns be consulted to ensure that the fiscal amount of the grant is the appropriate amount. If Section 4 remains in the bill, we recommend this is contemplated in the grant program and the ultimate fiscal amount of the grant. Additionally, we would be open to the Legislature and/or interested stakeholders helping us create the parameters of disbursement of these funds.