

## S. 59 – SBS: APBS &amp; Advocate Proposals

Sec. or V.S.A. Cite	S.59 APBS	Advocate Proposal	TA Comment
<p><b>Sec. 1. 1</b> <b>V.S.A. § 310</b></p>	<p>§ 310. DEFINITIONS As used in this subchapter: * * *</p> <p>(9) “Undue hardship” means an action <del>required to achieve compliance</del> <del>would require</del> requiring significant difficulty or expense <u>to the unit of government to which a public body belongs, considered</u> in light of factors including the overall size of the entity, <del>sufficient</del> <u>the availability of necessary personnel and staffing availability staff,</u> the entity’s <del>budget</del> <u>available resources,</u> and the costs associated with compliance.</p>		
<p><b>1 V.S.A. § 312(a)(2)(D)</b></p>	<p>* Not Currently in S.59 *</p>	<p><b><i>VCUDA Recommendation for (a)(2)(D):</i></b></p> <p>(2) Participation in meetings through electronic or other means.</p> <p>* * *</p> <p>(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</p>	<p>This is a policy choice for the committee to make. As proposed by VCUDA, the exception would include any multi-member district that includes 5 or more member municipalities: school districts, consolidated water districts, solid waste management districts, etc.</p> <p>If the committee would like this to apply solely to CUDs, I would recommend tailoring the exception to apply exclusively to districts organized under <a href="#">30 V.S.A. chapter 82</a>.</p>

		meeting location. The requirements of this subdivision (D) shall not apply to advisory bodies <u>or to a public body that is composed of five or more member municipalities or two or more member counties.</u>	
<b>Sec. 2. 1 V.S.A. § 312(a)(3)</b>	<p>(3)(A) State <del>nonadvisory</del> public bodies; hybrid meeting requirement; <u>exception for advisory bodies.</u> Any public body of the State, except advisory bodies, shall:</p> <p><del>(A)</del>(i) hold all regular and special meetings in a hybrid fashion, which shall include both a designated physical meeting location and a designated electronic meeting platform;</p> <p><del>(B)</del>(ii) electronically record all meetings; and</p> <p><del>(C)</del>(iii) for a minimum of 30 days following the approval and posting of the official minutes for a meeting, retain the audiovisual recording and post the recording in a designated electronic location.</p> <p><u>(B) Exception; site inspections and field visits. This subdivision (3) shall not apply to gatherings of a public body for purposes of a site inspection or field visit.</u></p>	<p><b>1. VHFA Proposal for (a)(3)(B):</b></p> <p><u>(B) Exception; site inspections and field visits. This subdivision (3) shall not apply to gatherings of a public body for purposes of that include a site inspection or field visit.</u></p> <p><b>2. Town of Brattleboro Proposal for (a)(3)(B):</b></p> <p><u>(B) Exceptions. This subdivision (3) shall not apply to:</u></p> <p><u>(i) gatherings of a public body for purposes of a site inspection or field visit; or</u></p> <p><u>(ii) annual meetings as authorized under 17 V.S.A. §§ 2640 and 2640a.</u></p> <p><b>3. Secretary of State Proposal for Site Inspections ((a)(3) or elsewhere):</b></p> <p>- Restrict the exception to site inspections or field visits that are required by statute or that are part of a quasi-judicial proceeding. Additionally, add language to clarify that the public body may not take testimony, admit evidence, or make any decisions during a field visit. Consider</p>	<p>1. The VHFA proposal extends the site inspection exception to any gathering that <i>includes</i> a site inspection/field visit. On its face, this would also eliminate the hybrid meeting requirement for portions of the meeting in which a public body conducts its business and takes action.</p> <p>2. The Brattleboro proposal amends a subdivision of the hybrid meeting requirement for <u>State</u> public bodies. This requirement does not apply to municipalities. However, by adding this language, the GA may add confusion and imply that subdivision (a)(3) <i>does</i> apply to municipalities.</p> <p>It may be better to add clarifying language that states, in even more express terms, that this subdivision applies to State-level public bodies.</p> <p>3. The SOS proposes to tie the site inspection and field visit exception to those inspections/visits that are mandated by law or part of a quasi-judicial proceeding. These are policy considerations. For the recommendation concerning quasi-</p>

		extending this exemption to the recording requirement for municipal public bodies under 1 V.S.A. § 312(a)(6).	judicial proceedings, this aligns with policy choices reflected in the OML. See <a href="#">1 V.S.A. § 312(e)</a> (exemption deliberations in connection with quasi-judicial proceedings), (f) (quasi-judicial written decisions need not be adopted in open meeting), and (h) (exemption from public input requirements).
<b>Sec. 2. 1 V.S.A. § 312(a)(6)</b>	<p>(6) Local <del>nonadvisory</del> public bodies; meeting recordings.</p> <p>(A) A public body of a municipality or political subdivision, except advisory bodies, shall record, in audio or video form, any meeting of the public body and post a copy of the recording in a designated electronic location for a minimum of 30 days following the <del>approval and</del> posting of the <del>official</del> minutes for a meeting.</p> <p>(B) A municipality is exempt from subdivision (A) of this subdivision (6) if compliance would impose an undue hardship on the municipality.</p> <p>(C) A municipality shall have the burden of proving that compliance under this section would impose an undue hardship on the municipality.</p> <p style="text-align: center;">* * *</p>	<p><b>1. VAPDA Proposal for (a)(6)(A):</b></p> <p>(A) A public body of a municipality or political subdivision, except advisory bodies, shall record, in audio or video form, any meeting of the public body and post a copy of the recording in a designated electronic location for a minimum of 30 days following the <del>approval and</del> posting of the <del>official</del> minutes for a meeting. <b>This subdivision shall not apply to the gatherings of a public body for purposes of a site inspection or field visit.</b></p> <p><b>2. Secretary of State Proposal for (a)(6)(A):</b></p> <p style="text-align: center;">* Same/similar to VAPDA recommendation. *</p> <p><b>3. VAN Proposal for (a)(6)(A):</b></p> <p>(A) A public body of a municipality or political subdivision, except advisory bodies, shall record <b>or cause to record</b>, in audio or video form,</p>	<p>1. This is a policy choice for the committee to make. It does harmonize with the exemption provided to State public bodies for purposes of hybrid meeting requirements.</p> <p>2. Same response as above.</p> <p>3. This language is not necessary. However, the committee may choose to add it in an effort to provide clarity for municipalities and others.</p> <p>4. It is not necessary to add language authorizing public agencies to remove or obscure obscene content that is unwillingly/inadvertently captured within a recording. It is extremely unlikely that this content constitutes a public record or public information, and therefore would not be subject to retention requirements. <a href="#">1 V.S.A. § 317(b)</a> defines a “public record” as “any written or recorded information, regardless of physical form or characteristics, which is produced or acquired in the course of public</p>

		<p>any meeting of the public body and post a copy of the recording in a designated electronic location for a minimum of 30 days following the <del>approval and</del> posting of the <del>official</del> minutes for a meeting.</p> <p><b>4. VLCT and VAPDA Recommendation for (a)(6) concerning obscene content:</b></p> <p>- Authorize municipalities to edit obscene content from recordings prior to posting.</p> <p><b>5. VLCT Recommendation for (a)(6):</b></p> <p>(A) A public body of a municipality or political subdivision, except advisory bodies, shall record, in audio or video form, any meeting of the public body and post a copy of the recording <del>in a designated electronic location</del> <u>on the municipality's website, if one exists,</u> for a minimum of 30 days following the <del>approval and</del> posting of the <del>official</del> minutes for a meeting.</p>	<p>agency business.” In <i>U.S. Right to Know v. University of Vermont</i>, 214 Vt. 543 (2021), SCOV stated that “[An] essential factor in determining whether a given record is a public record is whether its content reflects government—as opposed to personal—business. In that analysis, we look to the Legislature's description of public records for such considerations as whether the record contains information bearing on a government function, provides government officials with bases for making decisions, serves to ensure continuity with past government operations, or documents responsibilities of government actors.” The obscene content described in relation to this request does not meet the definition or any of the factors considered by Vermont courts in determining whether recorded information constitutes a “public record.”</p> <p>6. This is a policy choice for the committee to make. One legal consideration: this adds an exemption to the posting requirement. Municipalities that do not have a website would not be required to post. Further, this may add a basis for claiming that posting the recording would be an “undue burden,” since the municipalities would be directly</p>
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			bearing the cost of hosting these recordings on their own websites.
<b>1 V.S.A. § 312(c)(2)</b>	* Not Currently in S.59 *	<p><b><i>VLCT Recommendation for (c)(2):</i></b></p> <p>(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 <u>or a neighboring municipality</u>, 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.</p>	This is a policy choice for the committee to make.
<b>Sec. 2. 1 V.S.A. § 312(d)</b>	<p>(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:</p> <p style="text-align: center;">* * *</p> <p>(3) <u>A meeting agenda shall contain sufficient details concerning the specific matters to be discussed by the public body. Whenever a public body includes an executive session as an item on a posted meeting agenda, the public body shall list the agenda item as "proposed executive session."</u></p> <p>(4)(A) Any addition to or deletion from the agenda shall be made as the first act of business at the meeting.</p>	<p><b><i>1. VLCT Recommendation for (d)(1)(B):</i></b></p> <p>(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:</p> <p style="text-align: center;">* * *</p> <p>(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 <u>or a neighboring municipality</u>.</p>	<p>1. This is a policy choice for the committee to make.</p> <p>2. If the committee decides to add this requirement, I would recommend using language that directly reflects the motion requirements <u>1 V.S.A. § 313(a)</u>: "indicate the nature of the business of the executive session[.]"</p>

	***	<p><b>2. VAPDA Recommendation for (d)(3):</b></p> <p>(3) <u>A meeting agenda shall contain sufficient details concerning the specific matters to be discussed by the public body. Whenever a public body includes an executive session as an item on a posted meeting agenda, the public body shall list the agenda item as “proposed executive session.” session” and include the general topic of discussion.</u></p>	
<p><b>Sec. 2. 1</b> <b>V.S.A. § 312(g)</b></p>	* Not Currently in S.59 *	<p>(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. <u>Any act or decision of a board consisting entirely of members who are full-time paid staff of that public body shall be conducted in an open meeting; however, notwithstanding any provisions of this section to the contrary, all other operations of that public body can be conducted outside of a duly warned meeting to facilitate collaboration between its members.</u></p>	<p>If the committee chooses to grant this exception, I would recommend (1) amending the language to conform with the terms used in the Open Meeting Law; and (2) tailoring the language to the specific concerns raised by LURB. As drafted, the language cuts close to an exception for both “deliberations” and the daily operations of a public body. However, the use of “all other operations” would likely be read to be more expansive.</p>

<p><b>Sec. 3. 1</b> <b>V.S.A. § 313</b></p>	<p>(a) No public body may hold <u>or conclude</u> 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. <del>Such</del> <u>The vote to enter executive session</u> 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:</p> <p style="text-align: center;">* * *</p> <p>(10) security or emergency response measures, the disclosure of which could jeopardize public safety; <u>or</u> <u>(11) information relating to the interest rates for publicly financed loans.</u></p> <p style="text-align: center;">* * *</p>	<p><b><i>1. VAPDA and VLCT Recommendation for (a)(10):</i></b></p> <p>(10) security, <u>cybersecurity</u>, or emergency response measures, the disclosure of which could jeopardize public safety; <u>or</u></p> <p><b><i>2. Lisa Loomis Recommendation for (a)(11):</i></b></p> <p>Remove.</p>	<p>1. This language may not be necessary, but would add express clarity that cybersecurity discussions may be held in an executive session.</p> <p>2. This is a policy choice for the committee to make. I would note that the request appears to be based on an interpretation of (a)(11) that is different than some of the terms expressly used within that subdivision.</p>
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TA; 4/29/25