

# Vermont's Open Meeting Law

## **1 V.S.A. §§ 310 -314.**

Requires all **meetings of public bodies** to be **open to the public** unless a specific exception applies. In order to make a meeting open to the public, the public body must:

- ✓ Provide advance public notice of meetings, including meeting agendas.
- ✓ Discuss all business and take all actions in open meeting, unless an exception applies.
- ✓ Allow members of the public to attend and participate in meetings.
- ✓ Take meeting minutes and make them available to the public.

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## **What is a Public Body?**

**“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.

1 V.S.A. § 310(4).

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## What is a Meeting?

**“Meeting”** 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. 1 V.S.A §310 (3)(A)

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## What is a Meeting?

**Do all members need to be physically present for meetings?**

**No, but:** If a quorum or more of members will be participating in a meeting electronically, the meeting agenda must designate:

- At least one physical location where a member of the public can attend and participate in the meeting; and
- At least one member of the body, or at least one staff member or other designee, must be physically present at this location. 1 V.S.A. § 312(a)(2).

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## What is a Meeting?

**Do all members need to be physically present for meetings?**

**No, but also:**

- Any member who participates in a meeting remotely must be able to hear and be heard throughout the meeting. 1 V.S.A. § 312(a)(2). This means that participation by speakerphone or Skype, for example, can be appropriate, while participation by email is not.
- Each member who participates remotely must identify himself or herself when the meeting is convened. Any vote that is not unanimous must be taken by roll call. 1 V.S.A. § 312(a)(2).

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## What is a Meeting?

### COVID 19 RULES

**H.681 contains temporary amendments to the open meeting law.**

- **Physical location requirement temporarily waived.** During the Governor's declared state of emergency due to COVID-19, members of a public body may attend any public meeting using electronic means, without being physically present and without designating or staffing a physical meeting location.
- **Public participation and advance public notice required.** When meeting electronically, a public body must use technology that permits attendance of the public. Whenever feasible, public access must be allowed by telephone. Information regarding how the public may access meetings electronically must be posted and must be included in each meeting agenda.
- **Minutes timeframe extended when short-staffed.** In the event of a staffing shortage during this declared emergency, a public body extend the time limit for the posting of minutes to not more than 10 days (rather than 5 days) from the date of the meeting.

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## **What is a Meeting?**

### **Group Emails**

If a quorum of board members are part of the group email, and any dialogue occurs addressing business matters, this discussion is a “meeting” under 1 V.S.A. § 310(3)(A).

Beware Reply All!”

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## **What is a Meeting?**

### **Serial Communications**

Because the law seems to allow for “gathering” over time, these successive, interrelated private conversations, often in email, about the board's business that, taken together, involve a quorum.



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## **What is a Meeting?**

### **Social media groups**

Participation in a Facebook group, Front Porch Forum, or other online group by a quorum of members of a public body raises open meeting law concerns any time the body's business is discussed. This could be the case even if most — or even all — of the members of the public body remain passive and do not post about or respond to posts about the body's business.

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## **What is a Meeting?**

### **Collective editing of online documents**

Collective editing, even if performed by members individually and over time, may be a “meeting” under 1 V.S.A. § 310(3)(A) if a quorum ends up discussing business outside of the public view.

SOS recommendation: Name a point person who collects and compiles each member's comments for later discussion at a duly-warned meeting.

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## **What is a Quorum?**

**“Quorum”** A majority of the members of a public body.

Quorum is calculated by counting the number of total positions on a board or committee, regardless of any vacancies or recusals.

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## What is Business?

**“Business”** is “the public body’s governmental functions, including any matter over which the public body has supervision, control, jurisdiction, or advisory power.” 1 V.S.A. § 310(1).”

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## Not a Meeting/Business

- **Administrative Functions** such as scheduling a meeting, organizing an agenda, or distributing materials to discuss at a meeting, 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 so long as no money is appropriated, spent, or encumbered. 1 V.S.A. § 312(g); 1 V.S.A. § 310(3)(B).
- **Other functions.** Occasions when a quorum of a public body attends social gatherings, conventions, training programs, press conferences, media events, etc. 1 V.S.A. § 310(3)(C).
- **Meeting of a Different Public Body.** A gathering of a quorum of a public body at a duly warned meeting of another public body. 1 V.S.A. § 310(3)(D).
- **Site inspections** for tax assessments or abatements. 1 V.S.A. § 312(g).
- **Bilateral collective bargaining negotiations** As decided by the Vermont Supreme Court, between a school board negotiating committee and a labor union. *Negotiations Committee of Caledonia Central Supervisory Union v. Caledonia Central Education Association*, 2018 VT 18.

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**BUT.....**

**If members of the body stray into discussing the business of the body at any of these gatherings where a quorum is present, a meeting will have taken place.**

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## Notice

### Regular meetings

- Meetings scheduled at a recurring time and place. For example, the first Tuesday of every month, 6 pm at the high school gym.
- **Notice required** : A public body usually schedules regular meetings by adopting a resolution setting the time and place of the meetings. This information must be made available to the public on request. 1 V.S.A. § 312(c)(1).

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## Notice

### Special Meetings

- A meeting at a time or place outside of its regular meeting schedule.
- **Notice Required:** At least 24 hours before each special meeting, a public body must publicly announce it by giving notice of the meeting's time, place, and purpose to a newspaper or radio station serving the area, as well as to any person who has requested in writing to be notified of special meetings. 1 V.S.A. §§ 310(5), 312(c)(2), (5).
- All public bodies must give oral or written notice to **each member** (unless a member has waived this notice). 1 V.S.A. § 312(c)(2).



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## Notice

### Emergency meetings

- An emergency meeting may be held “**only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention.**”
- **Notice Requirements:** Emergency meetings do not require public announcement, posting of notices, or 24-hour notice to members, so long as some public notice is given as soon as possible before the meeting. 1 V.S.A. § 312(c)(3).
- Note that an emergency meeting should not be used if the public body is able to comply with the 24-hour notice requirements for special meetings.

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## **Notice**

## **Agendas**

- At least 48 hours prior to a regular meeting, and at least 24 hours prior to a special meeting, a meeting agenda must be posted to a website that the public body maintains or designates, if one exists.
- Note that there is no agenda requirement for emergency meetings.

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## **What information must an agenda contain?**

- The open meeting law does not define “agenda” or specify the information an agenda must contain, except to require that the agenda designate a physical location where a member of the public can attend and participate in a meeting if a quorum or more members of a public body are attending remotely. 1 V.S.A. § 312(a)(2)(D).
- SOS Recommends: In keeping with the law’s intent, an agenda should allow interested members of the public to be reasonably informed about what specific topics will be discussed, and what actions may be taken, at the meeting.

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## Changing an agenda

- If a public body wishes to **add or delete** an item from an agenda after it has been posted, it may only do so as the first act of business at the meeting. 1 V.S.A. § 312(d)(3)(A).
- SOS recommends that last-minute agenda items, especially those requiring board action, be added at a meeting only in an emergency. 1 V.S.A. § 312(d)(3)(B).

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## Meeting Minutes

- Public bodies must take minutes of their meetings. Minutes are the permanent record of the formal actions of the public body.
- The open meeting law requires that minutes “**give a true indication of the business of the meeting,**” covering all topics that arise.

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## Minutes (cont.)

**At minimum**, minutes must include:

- the names of all members of the public body who are present at the meeting;
- the names of all other active participants;
- all motions, proposals, and resolutions made, and their dispositions; and
- the results of all votes, with a record of individual votes if roll call is taken. 1 V.S.A. § 312(b)(1).

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## Minutes (cont.)

- Minutes are **public records** and must be made available for public inspection and copying **after five calendar** days from the date of the meeting.
- If a public body maintains or designates a website, minutes must also be **posted to that website** no later than five calendar days after the meeting.
- Except for draft minutes replaced with updated minutes **must not be removed from the website sooner than one year** , posted minutes from the date of the meeting for which they were taken. 1 V.S.A. § 312(b)(2).

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## When can a public body meet privately?

### Deliberative Session

- When the public body deliberates on its written decision as part of a **quasi-judicial proceeding**. A quasi-judicial proceeding is a case in which the legal rights of a party are adjudicated, conducted so that all parties may present evidence and cross-examine witnesses and resulting in an appealable written decision. 1 V.S.A. § 310(6).
- In this instance, although the hearing itself is open to the public, the deliberations that follow may be held in private, and the written decision that is issued need not be adopted at an open meeting if it is to be a public record. 1 V.S.A. § 312(e), (f).
- A deliberative session is not an open meeting and need not be warned.



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## **When can a public body meet privately?**

### **Executive Session**

- To enter executive session, a motion must be made in open session that indicates its reason for doing so, preferably naming the specific provision of Title 1, Section 313 that gives authority. For a state body, a two-thirds affirmative vote is required. 1 V.S.A. § 313(a).
- The only permissible reasons for entering executive session are set forth in 1 V.S.A. § 313.

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## Executive Session (cont.)

**Executive Session** is permissible to discuss the following topics but only after a finding that “*premature general public knowledge would clearly place the public body, or a person involved at a substantial disadvantage.*”

- Contracts. 1 V.S.A. § 313(a)(1)(A).
- Labor relations agreements with employees. 1 V.S.A. § 313(a)(1)(B).
- Arbitration or mediation. 1 V.S.A. § 313(a)(1)(C).
- Grievances, other than tax grievances. 1 V.S.A. § 313(a)(1)(D).
- Pending or probable civil litigation or prosecution, to which the public body is or may be a party. 1 V.S.A. § 313(a)(1)(E).
- Confidential attorney-client communications made for the purpose of providing professional legal services. 1 V.S.A. § 313(a)(1)(F).

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## **Executive Session (cont.)**

**Executive session** is permitted to discuss the following topics without the finding of substantial disadvantage:

- The negotiating or securing of real estate purchase or lease options. 1 V.S.A. § 313(a)(2).
- The appointment, employment, or evaluation of a public officer or employee, provided that a public body must make the final hiring or appointment decision, and explain its reasons for the decision, in open meeting. 1 V.S.A. § 313(a)(3).
- A disciplinary or dismissal action against a public officer or employee, although this does not impair the right of the officer or employee to a public hearing if formal charges are brought. 1 V.S.A. § 313(a)(4).

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## **Executive Session (cont.)**

- A clear and imminent peril to the public safety. 1 V.S.A. § 313(a)(5).
- Exempt records under Vermont's public records act, provided that this exemption does not by itself permit discussion in executive session of the general subject to which the exempt record pertains. 1 V.S.A. § 313(a)(6).
- Security or emergency response measures, if disclosure could jeopardize public safety. 1 V.S.A. § 313(a)(10).

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## Executive Session (cont.)

- A public body may choose to invite into executive session any of the following: legal counsel; staff; clerical assistants; and persons who are subjects of the discussion or whose information is needed. 1 V.S.A. § 313(b).
- Once in executive session, no formal action may be taken except for actions related to securing a real estate purchase option. 1 V.S.A. § 313(a).
- In all other instances, appropriate topics may be discussed in executive session, but ultimate action must be taken by motion and vote in open session.

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## **How Does a Public Body Cure a Violation?**

If the public body acknowledges a violation of the open meeting law, it must cure the violation within 14 calendar days.

The public body must either ratify, or declare as void, any action that was taken at or resulted from:

- A meeting that was improperly noticed under 1 V.S.A. § 312(c) (public announcement and posting of regular, special, and emergency meetings);
- A meeting that a person or the public was wrongfully excluded from attending; or
- An executive session, or a portion of an executive session, that was not authorized by 1 V.S.A. § 313(a)(1)– (10).
- The public body must adopt specific measures that actually prevent future violations. 1 V.S.A. § 314(b)(4).

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## **What are the penalties/remedies for violations**

The following persons can be found guilty of a misdemeanor and fined up to \$500:

- A person who is a member of a public body and who knowingly and intentionally violates the provisions of the open meeting law.
- A person who, on behalf or at the behest of a member of a public body, knowingly and intentionally violates the provisions of the open meeting law.
- A person who knowingly and intentionally participates in the wrongful exclusion of any person or persons from any meeting. 1 V.S.A. § 314(a).

Courts may also grant injunctive relief, declaratory judgment, and attorneys fees.

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**QUESTIONS ???????**