Technical Advisory Group Agenda

December 11, 2023

1 PM – 4 PM

Virtual Meeting Only (Go-To Meeting Link)

1:00 PM	Welcome & introductions
1:15 PM	Review agenda – opportunity for members to add agenda items
1:25 PM	Review key milestones in the PUC's work
1:40 PM	Review of draft procedures (current draft incorporates public comment)
2:00 PM	Discuss election of Chair, Vice Chair, and Secretary
2:20 PM	Review of group's statutory role in the CHS
2:25 PM	Group discussion on the sequence of statutory tasks
3:05 PM	Upcoming CHS events
3:10 PM	Schedule next meeting
3:20 PM	Opportunity for Public Comment
3:30 PM	Adjourn

The following table lists the statutory deadlines in Public Act 18 (2023 Vt., Bien. Sess.)("Act 18"). This table is for informational purposes only, Act 18 is the authoritative document.

Deadline	Item
January 1, 2023	Installed clean heat measures become eligible for credit
May 11, 2023	Act 18 becomes law
July 1, 2023	Default delivery agent proceeding opened
August 1, 2023	Rulemaking/implementation proceeding opened
January 31, 2024	Fuel dealers register with Public Utility Commission
February 15, 2024	Report on suggested revenue streams
February 15, 2024	First checkback report to General Assembly
June 1, 2024	Default delivery agent designated
September 1, 2024	Potential study published by Department of Public Service
January 1, 2025	Annual rate of carbon intensity decrease for 2030 targets published
January 15, 2025	Final proposed rules submitted to General Assembly
January 15, 2025	Second checkback report to General Assembly
January 15, 2025	Equity Advisory Group report to General Assembly

PROCEDURES FOR THE CLEAN HEAT STANDARD TECHNICAL ADVISORY GROUP

I. Scope and Purpose

Act 18 of 2023 directs the Vermont Public Utility Commission ("Commission") to establish a Technical Advisory Group ("TAG") to assist the Commission in the ongoing management of the potential Clean Heat Standard, including advising the Commission on many of the technical aspects of the program. The law requires the Commission to "establish the procedure for the TAG, including member term lengths and meeting procedures."[1] This document serves as the statutorily required procedure for the TAG.

II. Duties of the Technical Advisory Group

A. Pursuant to 30 V.S.A. § 8128(a), the TAG is charged with the following duties:
   i. Establishing and revising the lifecycle carbon dioxide equivalent (CO2e) emissions accounting methodology to be used to determine each obligated party's annual requirement pursuant to 30 V.S.A. § 8124(a)(2);
   ii. Establishing and revising the clean heat credit value for different clean heat measures;
   iii. Periodically assessing and reporting to the Commission on the sustainability of the production of clean heat measures by considering factors including greenhouse gas emissions; carbon sequestration and storage; human health impacts; land use changes; ecological and biodiversity impacts; groundwater and surface water impacts; air, water, and soil pollution; and impacts on food costs;
   iv. Setting the expected life length of clean heat measures for the purpose of calculating credit amounts;
   v. Establishing credit values for each year over a clean heat measure's expected life, including adjustments to account for increasing interactions between clean heat measures over time so as to not double-count emission reductions;
   vi. Facilitating the program's coordination with other energy programs;
   vii. Calculating the impact of the cost of clean heat credits and the cost savings associated with delivered clean heat measures on per-unit heating fuel prices;
   viii. Calculating the savings associated with public health benefits due to clean heat measures;
   ix. Coordinating with the Agency of Natural Resources to ensure that greenhouse gas emissions reductions achieved in another sector through the implementation of the Clean Heat Standard are not double-counted in the Vermont Greenhouse Gas Emissions Inventory and Forecast;
   x. Advising the Commission on the periodic assessment and revision requirement established in 30 V.S.A. § 8124(a)(3); and
   xi. Any other matters referred to the TAG by the Commission.

B. Pursuant to 30 V.S.A. §§ 8127(b) and 8128(c) the TAG must:

[1] 30 V.S.A. § 8128(b).

i. Consult with the Commission on a standard methodology for determining what party or parties shall be the owner of a clean heat credit upon its creation; and

ii. Provide input and feedback on the clean heat measure characterizations and relevant assumptions, including CO_2e lifecycle emissions analyses, of the Commission's third-party technical consultant.

C. The TAG, in consultation with the Commission, shall prioritize and sequence assignments to effectively cover the statutory requirements.

D. The TAG, in adhering with 30 V.S.A. § 8128(c), must:

i. file with the Commission its analysis of how clean heat measure characterizations developed by the technical consultant meet the requirements of 30 V.S.A. §§ 8127(d) and 8124(d)(2);

ii. annually file with the Commission, by a date to be determined by rule, a list of measures that it reviewed during the previous calendar year; and

iii. include in its filing with the Commission appropriate information documenting the eligibility determinations that it has proposed for each measure.

III. Membership

A. The TAG will consist of up to 15 members appointed by the Commission consistent with 30 V.S.A. § 8128(b). Each person appointed to join the TAG will be a voting TAG member. Because of the unique expertise and perspectives of each member, regular attendance by all group members at the meetings is expected.

B. The appointees from organizations explicitly named in 30 V.S.A § 8128(b) may designate another staff member from their organization to serve as a full voting member of the TAG in their place when the appointee is unavailable. Long-term changes in appointees must be approved by the Commission.

C. Members must elect a Chair, Vice Chair, and Secretary. The Chair or Vice Chair will preside at any meeting of the TAG. The Secretary will prepare and provide the Commission with the minutes of all meetings. In the absence of the Secretary, the TAG will elect a member to serve as acting secretary. TAG meetings are subject to the Open Meeting Law (1 V.S.A. §§ 310-314), and minutes must be prepared and managed consistent with 1 V.S.A. § 312(b).[2]

[2] (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.

D. Members of the TAG may be removed by the Commission for cause, which may include poor attendance or unprofessional conduct.

E. Non-Member Participants. TAG members may be joined by additional experts on behalf of their organizations. These experts will be non-voting and have a consultative role only. TAG members should provide notice of experts joining on behalf of their organizations via the agenda that is to be provided in advance of the relevant meeting.

IV. Term Length

A. The initial term of service for TAG members will be up to two years from the date of appointment. If the potential Clean Heat Standard is approved by the Legislature, the Commission will revisit term lengths and member appointments.

B. A member of the TAG may resign by submitting a letter of resignation to the Commission.

C. When a TAG member position is open, the Commission will determine whether to fill that position, and if so:

a. Notify parties of the vacancy;
b. Accept and review motions to consider nominations to fill the seat that comply with the designations set in 30 V.S.A. § 8128(b); and
c. appoint a qualified member as soon as practicable.

V. Compensation

A. Members who are not otherwise compensated by their employer are entitled to per diem compensation and reimbursement for expenses under 32 V.S.A. § 1010(b).

B. Advisory group members must inform the Commission that they are eligible and interested in claiming per diem compensation. Members may submit per diem and other reimbursable claims to the Commission monthly, reflecting the amount of compensation authorized under 32 V.S.A. § 1010(b)(2).

VI. Quorum & Voting

A. A quorum of the TAG will be 11 members. If there are fewer than 15 members appointed to the TAG, a quorum will be three quarters of the current membership. The TAG will act by majority vote of the members present. Presence may include being in the same physical space or participating remotely by phone or meeting platform.

B. Only TAG members are eligible to vote. Non-member participants and members of the public are not eligible to vote on the business of the TAG.

VII. Scheduling

A. The TAG members will determine the meeting schedule and frequency that will allow the TAG to fulfill the duties listed in Act 18 of 2023 and to assist the Commission in its work to meet its statutory deadlines. Members should expect that at least monthly meetings will be necessary in the first year. The Commission's proposed rules for the Clean Heat Standard are due on or before January 15, 2025. The Commission and the TAG will communicate about

scope of work, process, and deadlines so that the TAG may set appropriate schedules and agendas.

B. All advisory group members should be consulted when scheduling TAG meetings and an attempt should be made to accommodate most members, including allowing for remote attendance. Notice of meetings must be provided to the Commission at least seven days before the specified time so that the Commission may post the notice on its website. TAG meetings are subject to the Open Meeting Law (1 V.S.A. §§ 310-314), which requires a notice to be posted 48 hours ahead of any regularly scheduled meeting and that these meetings be open to the public.[3]

C. In accordance with 1 V.S.A. § 312(a)(2)(D), if a quorum or more of the TAG members attend a meeting without being physically present at a designated meeting location, the meeting agenda must designate at least one physical location where a member of the public can attend and participate in the meeting. At least one TAG member or at least one designee of the TAG, shall be physically present at the designated meeting location.

VIII. The TAG's Work and Coordination with the Commission

A. The TAG and the Commission will work together to create a schedule of deliverables to meet the deadlines in Act 18 of 2023. This schedule will inform the TAG's agendas.

B. The TAG must provide the Commission with draft meeting minutes within four days of the date of any meeting. The Commission will then post these meeting minutes on its website within 5 calendar days of the meeting in accordance with 1 V.S.A. § 312(b). The TAG will review and approve the meeting minutes at the next meeting at which a quorum of its members are present. If any changes are made to the minutes, the TAG must provide the final version of the meeting minutes to the Commission for posting.

C. The TAG will submit documentation of its work product and decisions addressing the items specified in Act 18, including 30 V.S.A. §§ 8127(b), 8128(a), and 8128(c).

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E. The Open Meeting Law generally prohibits collective editing of a document outside of a duly-warned public meeting. In order to collaborate and adhere to 1 V.S.A. § 310(3)(A), the TAG may instead name "a point person who collects and compiles each member's comments for later discussion at a duly-warned meeting."[4]

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Relevant Portions of Act 18

§ 8128. Clean Heat Standard Technical Advisory Group

(a) The Commission shall establish the Clean Heat Standard Technical Advisory Group (TAG) to assist the Commission in the ongoing management of the Clean Heat Standard. Its duties shall include:

(1) establishing and revising the lifecycle carbon dioxide equivalent (CO2e) emissions accounting methodology to be used to determine each obligated party's annual requirement pursuant to subdivision 8124(a)(2) of this chapter;

(2) establishing and revising the clean heat credit value for different clean heat measures;

(3) periodically assessing and reporting to the Commission on the sustainability of the production of clean heat measures by considering factors including greenhouse gas emissions; carbon sequestration and storage; human health impacts; land use changes; ecological and biodiversity impacts; groundwater and surface water impacts; air, water, and soil pollution; and impacts on food costs;

(4) setting the expected life length of clean heat measures for the purpose of calculating credit amounts;

(5) establishing credit values for each year over a clean heat measure's expected life, including adjustments to account for increasing interactions between clean heat measures over time so as to not double-count emission reductions;

(6) facilitating the program's coordination with other energy programs;

(7) calculating the impact of the cost of clean heat credits and the cost savings associated with delivered clean heat measures on per-unit heating fuel prices;

(8) calculating the savings associated with public health benefits due to clean heat measures;

(9) coordinating with the Agency of Natural Resources to ensure that greenhouse gas emissions reductions achieved in another sector through the implementation of the Clean Heat Standard are not double-counted in the Vermont Greenhouse Gas Emissions Inventory and Forecast;

(10) advising the Commission on the periodic assessment and revision requirement established in subdivision 8124(a)(3) of this chapter; and

(11) any other matters referred to the TAG by the Commission.

(b) The Clean Heat Standard Technical Advisory Group shall consist of up to 15 members appointed by the Commission. The Commission shall establish the procedure for the TAG, including member term lengths and meeting procedures. Members of the TAG shall be appointed by the Commission and shall include the Department of Public Service, the Agency of Natural Resources, the Department of Health, and parties who have, or whose representatives have, expertise in one or more of the following areas: technical and analytical expertise in measuring lifecycle greenhouse gas emissions, energy modeling and data analysis, clean heat measures and energy technologies, sustainability and non-greenhouse gas emissions strategies designed to reduce and avoid impacts to the environment, mitigating environmental burdens as defined in 3 V.S.A. § 6002, public health impacts of air quality and climate change, delivery of heating fuels, land use changes, deforestation and forest degradation, and climate change mitigation

policy and law. The Commission shall accept and review motions to join the TAG from interested parties who have, or whose representatives have, expertise in one or more of the areas listed in this subsection. Members who are not otherwise compensated by their employer shall be entitled to per diem compensation and reimbursement for expenses under 32 V.S.A. § 1010.

(c) The Commission shall hire a third-party consultant responsible for developing clean heat measure characterizations and relevant assumptions, including CO2e lifecycle emissions analyses. The TAG shall provide input and feedback on the consultant's work. The Commission may use appropriated funds to hire the consultant.

(d) Emission analyses and associated assumptions developed by the consultant shall be reviewed and approved annually by the Commission. In reviewing the consultant's work, the Commission shall provide a public comment period on the work. The Commission may approve or adjust the consultant's work as it deems necessary based on its review and the public comments received. (Added 2023, No. 18, § 3, eff. May 12, 2023.)

§ 8124. Clean Heat Standard compliance

(d) Equitable distribution of clean heat measures.

(2) Of their annual requirement, each obligated party shall retire at least 16 percent from customers with low income and an additional 16 percent from customers with low or moderate income. For each of these groups, at least one-half of these credits shall be from installed clean heat measures that require capital investments in homes, have measure lives of 10 years or more, and are estimated by the Technical Advisory Group to lower annual energy bills. Examples shall include weatherization improvements and installation of heat pumps, heat pump water heaters, and advanced wood heating systems. The Commission may identify additional measures that qualify as installed measures.

§ 8127. Tradeable clean heat credits

(b) Credit ownership. The Commission, in consultation with the Technical Advisory Group, shall establish a standard methodology for determining what party or parties shall be the owner of a clean heat credit upon its creation. The owner or owners may transfer those credits to a third party or to an obligated party.

A GUIDE TO OPEN MEETINGS

Revised January 2019

Published By:
Vermont Secretary of State
128 State Street
Montpelier, VT 05633

VERMONT

A Message from the Secretary

January 2019

Living in Vermont, we expect openness in government. Any day the legislature is in session we can sit down in either chamber, or in the various committee rooms, and see laws being made. Any day we can walk into the county courthouse and attend any hearing or trial. We can watch the arguments being given before the Vermont Supreme Court. We can attend hearings and meetings of the local zoning board, and those of any other public body, and we can expect to see meeting notices in the newspaper or on public bulletin boards. We can review and copy public documents in state and local offices.

One important foundation of openness in Vermont is our "Right to Know" laws, including those related to open meetings and public records. Together they are the most important public laws we have, because they allow us direct access to the decisions that affect us. A full understanding of these laws makes everyone a better citizen and makes for a more responsive and accountable government. **This guide is an introduction to the open meeting law.**

You can read the open meeting law for yourself – it is found in every town clerk's office, in Title 1 of the Vermont Statutes Annotated. Title 1 is the first volume of a set of green law books that includes all the statutory laws of the state. Look for sections 310 through 314, and make sure you check the pocket part in the back to see if there is newer law to review for each section.

You can also read the open meeting law online at the Vermont State Legislature's website: http://legislature.vermont.gov/statutes/chapter/01/005.

Every few years, the Legislature may make a few more changes to the law. Be sure to also take a look at Acts No. 95 and 166 of 2018, which contain the latest amendments:

https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT095/ACT095%20As%20Enacted.pdf;

https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT166/ACT166%20As%20Enacted.pdf.

We hope this publication will be of use to all Vermonters, both those we trust to serve on our state and local boards and those who wish to stay informed and participate in the decisions being made. Please let me know if there are ways we can improve future editions.

James C. Condos

James C. Condos
Vermont Secretary of State

Table of Contents

Why do we have an open meeting law?

Vermont's open meeting law requires all meetings of public bodies to be open to the public at all times, unless a specific exception applies. 1 V.S.A. § 312(a)(1). The purpose of the law is to promote transparency, accountability, and better decision-making in government.

In general, the law requires public bodies to:

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

To whom does the open meeting law apply?

The open meeting law applies to "public bodies" of the state and its municipalities. "Public body" includes any state or municipal board, council, or commission, as well as any committee or subcommittee of these bodies. 1 V.S.A. § 310(4). This means the open meeting law governs the meetings of local selectboards and school boards, planning commissions and development review boards, boards of civil authority and of abatement, auditors and listers, municipal public library trustees, cemetery and recreation commissions, and various other groups referenced in state statute or by a town's charter. It also applies to the meetings of any committee or subcommittee that is created or empowered by a public body to do its work, no matter its size.

Although the law generally applies to all state and municipal public bodies, it does not apply to individual officials. There is no public right to sit in a public official's office and watch him or her conduct town business, or to oversee the work assignments of staff or other personnel. 1 V.S.A. § 312(g).

The open meeting law does not generally apply to nonprofit corporations, although a particular nonprofit may be required to comply with the law through language found elsewhere in statute, in its corporate governance documents, or in agreements with funding sources. For example, a nonprofit's articles of incorporation could designate it as an instrumentality or authority of the state (potentially bringing it within the definition of a "public body" in 1 V.S.A. § 310(4)), or a grant or contract could require open meeting law compliance as a condition of funding. Otherwise, you might look to a nonprofit's articles of incorporation or bylaws for guidance on its meeting procedures and participation requirements.

When does the open meeting law apply?

A board or other public body must comply with the open meeting law any time a "quorum" holds a "meeting," that is, gathers to discuss its business or to take action. 1 V.S.A. § 310(3)(A).

"Business of the public body" is defined as "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).

A quorum is 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. For a three-member board, the quorum is two; for a five-member board, the quorum is three.

A meeting is a gathering of a quorum of a public body for the purpose of discussing the body's business or taking action. 1 V.S.A. § 310(3)(A). A "meeting" under the open meeting law can occur regardless of the members' physical location; there are no exceptions for phone conversations, work sessions, or retreats. This means that if a majority of a board find themselves together at a social function, they must take care not to discuss the business of the board.

A "meeting" may also come together over a period of time. If a discussion about town business occurs over the course of a few days or a week (for example, via a string of emails or Facebook posts), it may well amount to a "meeting" that triggers the open meeting law's requirements. See page ten for more information on electronic communication and social media.

Exceptions

For the purposes of the open meeting law, "meeting" does not include the following:

- Any communication 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 no other business of the public body is discussed or conducted. 1 V.S.A. § 310(3)(B).
- Occasions when a quorum of a public body attends social gatherings, conventions, 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. 1 V.S.A. § 310(3)(C).
- 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. 1 V.S.A. § 310(3)(D).
- Site inspections for tax assessments or abatements. 1 V.S.A. § 312(g).
- 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).
- As decided by the Vermont Supreme Court, bilateral collective bargaining negotiations 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.

Serial communications

The open meeting law does not explicitly address serial communications, also known as "serial meetings," "walking quorums," or "daisy-chain communications." We generally recommend that board members avoid engaging in successive, interrelated private conversations about the board's business that, taken together, involve a quorum. Because the law seems to allow for "gathering" over time, these types of communications can be risky, especially if used to develop consensus. Even with the best of intentions, their use outside a duly warned meeting may obscure the board's decision-making process and thus interfere with the public's ability to participate and to hold government officials accountable.

Of course, we understand that individual board members and administrators need to work between meetings and to educate themselves on matters under their jurisdiction. Whether a particular set of communications amounts to inappropriate circumvention of the open meeting law's requirements is, in the end, a question of fact best posed to the public body's own attorney, or the courts.

How does a board provide notice of its meetings?

The open meeting law recognizes three types of meetings: regular, special, and emergency. Depending on the type of meeting, a board or other public body may need to provide advance notice by "publicly announcing" the meeting, by posting public notices, or both. Public bodies also usually need to create an agenda in advance of each meeting and make it available to the public. 1 V.S.A. § 312(d)(1), (2). See below for more information on agenda requirements.

Regular meetings

A public body 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). When a board meets regularly on, for example, the first Tuesday of every month, the law does not require additional public announcement or posting of these meetings so long as the time and place has been clearly designated by resolution or other determining authority (statute, charter, regulation, ordinance, or bylaw). Public bodies must, however, create and make available meeting agendas for regular meetings. 1 V.S.A. § 312(d)(1), (2).

Special meetings

A special meeting occurs when a board meets at a time or place outside of its regular meeting schedule. 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). Municipal public bodies must also post a notice of each

special meeting in or near the town office and in at least two other designated public places in the municipality. 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). In addition, agendas must be created and made available for special meetings. 1 V.S.A. § 312(d)(1), (2).

Emergency meetings

An emergency meeting may be held in the event of a true emergency, that is, "only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention." 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. There is no agenda requirement for emergency meetings.

Notice when adjourning or continuing a meeting

When a meeting is to be continued to a new time or place, a public body should announce the new time and place before adjournment. Otherwise, the subsequent meeting is considered a new meeting that must be duly-warned as above. 1 V.S.A. § 312(c)(4).

What are the requirements for meeting 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. In addition, and within the same timeframes, a municipal public body must post the agenda in or near the municipal office and in at least two other designated public places in the municipality. A meeting agenda must be made available to a person prior to the meeting upon specific request. 1 V.S.A. § 312(d)(1), (2). Note that there is no agenda requirement for emergency meetings.

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). 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.

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). We recommend that last-minute agenda items, especially those requiring board action, be added at a meeting only in an emergency. In other situations, a better practice is to handle items that were not included on

the posted agenda at the next regular meeting or, if necessary, to call a special meeting so that the public gets notice of the item and has an opportunity to attend and participate. Other adjustments to the agenda, such as reordering agenda items, may be made at any time during a meeting. 1 V.S.A. § 312(d)(3)(B).

What are the requirements for minutes?

Public bodies must take minutes of their meetings. Minutes are the permanent record of the formal actions of the public body and play an important role in recording the history of the public body's business.

The open meeting law requires that minutes "give a true indication of the business of the meeting," covering all topics that arise. 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).

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, posted minutes must not be removed from the website sooner than one year from the date of the meeting for which they were taken. 1 V.S.A. § 312(b)(2).

When can a board meet privately?

The open meeting law does not apply to site inspections for the purpose of assessing damage or making tax assessments or abatements; clerical work; work assignments of staff or other personnel; or 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).

In addition, public bodies may meet privately in deliberative session or executive session under certain limited circumstances. 1 V.S.A. §§ 312(e), (f); 313.

Deliberative session

A public body may meet without notice or public attendance when it 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.

Executive session

A public body may also enter into executive session, which is a closed portion of a public meeting. 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 municipal body, the motion must get a majority vote of those present to pass. 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. One category of permissible reasons requires the public body to make a specific finding that "premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage." This finding must be made before considering one of the following permissible topics in executive session:

- 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).

Other topics a public body may consider in executive session are:

- 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).
- 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).
- Student academic records, suspension, or discipline. 1 V.S.A. § 313(a)(7).
- Testimony from a person in a Parole Board parole proceeding, if public disclosure of the person's identity could result in physical or other harm to him or her. 1 V.S.A. § 313(a)(8).

- Information relating to a pharmaceutical rebate or to supplemental rebate programs that is protected from disclosure either by federal law or by Medicaid terms and conditions, 1 V.S.A. § 313(a)(9).
- Security or emergency response measures, if disclosure could jeopardize public safety. 1 V.S.A. § 313(a)(10).

A board 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). (This differs from a deliberative session, in which decisions may be made so long as a written decision is issued that is a public record.) 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.

Abusing the law of executive session is offensive to the purpose of open meetings. Boards should close their meetings rarely, and then only for legitimate purposes. Some boards go beyond the requirements of the open meeting law and do everything in public (except when acting in a quasi-judicial capacity, where constitutional due process may require private deliberations). The risks involved in letting everyone know your business are not small. Nonetheless, there is no penalty for extra openness and a high return on the investment if the public understands you have nothing to hide.

Do board members need to be physically present for meetings?

Not necessarily. As long as certain requirements are met, one or more members of a public body may fully participate in discussing the body's business and may vote at a regular, special, or emergency meeting by electronic or other means without being physically present at the designated meeting location. 1 V.S.A. § 312(a)(2).

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. 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).

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).

Does the open meeting law permit board members to communicate with each other electronically or through use of social media?

Under certain circumstances. The open meeting law clearly authorizes members of a public body to attend and participate in a duly-warned meeting through electronic means, so long as each member can hear and be heard by those persons attending at the designated physical location. 1 V.S.A. § 312(a)(2). The law also specifically permits use of group email or other electronic communication to schedule a meeting, organize an agenda, or distribute materials to discuss at a meeting. 1 V.S.A. § 310(3)(B). (Note that email correspondence, and other electronic communication that results in written or recorded information, is subject to Vermont's Public Records Act, and so must generally be made available to the public for inspection and copying upon request. See 1 V.S.A. §§ 315–320.)

Beyond these provisions, the open meeting law does not explicitly address appropriate use of electronic communications and social media by members of public bodies. Indeed, most of the open meeting statutes were drafted before the dominance of social media and the frequency of electronic communication in the various forms we see today. Here are some of our thoughts on using these tools in light of the open meeting law's language, its purpose, and the court cases interpreting it. We also strongly recommend that public bodies consult their own legal counsel for advice.

Group emails

Group emails do not necessarily violate the open meeting law, but it is best to proceed with caution. It is permissible to use group email to schedule a meeting, to create an agenda, or to distribute information for discussion at a meeting. 1 V.S.A. § 310(3)(B). It is also permissible to use group email as part of quasi-judicial deliberations, after a public hearing and as part of producing a written decision. 1 V.S.A. § 312(e), (f). Otherwise, group emails should not be used by a quorum of a public body to discuss the body's business. 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) and the open meeting law's notice and public participation requirements are triggered. Essentially, a business discussion, and therefore a "meeting," can occur as soon as you hit "reply all."

Collective editing of online documents

We recommend that a quorum of a public body should not participate in collectively editing a document outside of a duly-warned public meeting, unless the body is in deliberative session as part of a quasi-judicial proceeding. Collective editing, even if performed by members individually and over time, may well fall within the bounds of a "meeting" under 1 V.S.A. § 310(3)(A) when an exchange of ideas and opinions occurs outside of the public view. This is so even if the work in progress is made public, as the open meeting law requires more in terms of

advance public notice and public participation. See 1 V.S.A. § 312. We cannot assume, for example, that all members of the public will have the skills or means to access a tool such as Google Docs or be able offer their opinions on the views exchanged. In our view, an acceptable alternative is to instead name a point person who collects and compiles each member's comments for later discussion at a duly-warned 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 is especially so if membership in the group is "closed" (e.g. only town residents may join), although participation in an entirely "open" group may also be problematic. 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.

In general, if a quorum of a public body gathers to discuss the body's business, a "meeting" is being held under 1 V.S.A. § 310(3)(A) and the open meeting law's notice and public participation requirements are triggered. To be counted towards a quorum, and to participate in a meeting via electronic means under the open meeting law, an individual member must be able to hear and be heard, but need not necessarily speak. See 1 V.S.A. § 312(a)(2). So, if a quorum of board members have joined a Facebook group, and if a majority of total board members post an exchange of ideas or opinions concerning the board's business, an open meeting law violation may well have occurred. Even if just one board member posts, the passive, non-posting membership of a quorum in an online group where members of the public are discussing the board's business could be considered a "meeting" under a very strict reading of the law.

There are certainly accessibility and transparency benefits to being available to the public via social media sites. Members of public bodies, in remaining mindful of the public's right to know and participate, must nonetheless avoid "gathering to discuss business" at a time and place that has not been announced in advance or is not accessible to all.

Text messaging

We generally recommend that members of a public body refrain from texting each other during an open meeting. Texting between members who are present is not explicitly prohibited by the open meeting law, but we think these types of "shadow conversations" can create an appearance of impropriety, and in some situations might serve to keep information and discussions that inform officials' decision-making from the members of the public attending the meeting. (The same can be said for low-tech versions of texting, like passing notes.) Texts to and from members who are not physically present at the meeting create additional concerns because of the law's requirements for participation in meetings through electronic means. For example, a member who attends a meeting without being physically present must be able to hear and be

heard throughout the meeting. 1 V.S.A. § 312(a)(2)(C). Even if the remote member does not intend to "attend" the meeting for purposes of quorum and voting, we think this type of communication could under some circumstances—where the body's business is discussed—raise questions about whether an open meeting law violation has occurred.

Texting while inside executive session is also problematic. Attendance in executive session is limited to board members and, in the board's discretion, staff, clerical assistants, legal counsel, and persons who are subjects of the discussion or whose information is needed. 1 V.S.A. § 313(b). So, conversations by text about the business of the executive session with individuals who are not on this list is inappropriate. Although not explicitly prohibited by the law, members of public bodies should also consider that texting or otherwise conversing with board members absent from the open portion of the meeting (when the motion to enter executive session was made) may, under some circumstances, work to generate public mistrust.

What rights do members of the public have?

Individual members of the public have the right to obtain meeting agendas in advance, to be notified directly of upcoming special meetings, and to view or copy meeting minutes. Agendas of regular or special meetings must be made available to any person prior to the meeting upon request. 1 V.S.A. § 312(d). In addition, anyone can request in writing that a public body notify him or her of the body's special meetings. The request applies to the calendar year in which it is made, except that requests made in December apply also to the following year. 1 V.S.A. § 312(c)(5). Meeting minutes must (either in draft or final form) be made available for inspection or copying no more than five calendar days from the date of any meeting. 1 V.S.A. § 312(b)(2).

Members of the public have the right to attend public meetings. 1 V.S.A. § 312(a)(1). Meetings of public bodies are subject to the public accommodation requirements detailed in Vermont's anti-discrimination statutes. 1 V.S.A. § 312(a)(1); see also 9 V.S.A. chapter 139. We understand the open meeting law to permit members of the public to record or film public meetings, so long as this is not done in a manner that disrupts the meeting. If a board decides to meet in private in executive session, members of the public have the right to know its reason for doing so. 1 V.S.A. § 313(a).

Members of the public also have the right to participate in public meetings. Specifically, public bodies must give members of the public a reasonable opportunity to express their opinions on matters being considered by the body at an open meeting. 1 V.S.A. § 312(h). Many boards allow public comment at the start of the meeting, while others place it as the final agenda item. Some boards allow public comment whenever anyone present has something to add to the discussion. We believe it is a best practice to allow the public to comments on each item as the board proceeds through the agenda. The public comment period, however, is not a free-for-all; the board chair may establish reasonable rules to maintain order, and reasonable limitations on the amount of time for each speaker are not unusual or improper.

Members of the public have the right to enforce the open meeting law themselves by filing suit in court. 1 V.S.A. § 314. See belowfor details on filing a complaint with a public body and the court.

What happens if a public body violates the open meeting law?

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).

In addition, the Attorney General and any person aggrieved by a violation of the open meeting law has the right to file suit in court, asking for injunctive relief (requiring the board to stop a specified act or behavior) or a declaratory judgment (a binding determination of the parties' rights). Under some circumstances, the court may also hold a public body responsible for the other party's attorney's fees and litigation costs. 1 V.S.A. § 314(b)(1), (d).

How does a member of the public enforce the open meeting law?

If you think that an open meeting law violation has occurred, the first step is to submit a written notice to the public body, alleging a specific violation and requesting a specific cure. Upon receipt of this written notice, the public body must respond publicly within 10 calendar days, either by acknowledging the violation and stating its intent to cure it or by stating its determination that no violation occurred and so no cure is necessary. Failure to publicly respond is treated as a denial of the violation. 1 V.S.A. § 314(b)(1)–(3).

If the public body acknowledges a violation of the open meeting law, it must cure the violation within 14 calendar days. First, the public body must either ratify, or declare as void, any action that was taken at or resulted from: 1) a meeting that was improperly noticed under 1 V.S.A. § 312(c) (public announcement and posting of regular, special, and emergency meetings); 2) a meeting that a person or the public was wrongfully excluded from attending; or 3) an executive session, or a portion of an executive session, that was not authorized by 1 V.S.A. § 313(a)(1)–(10). Second, the public body must adopt specific measures that actually prevent future violations. 1 V.S.A. § 314(b)(4).

If the public body denies the violation or fails to cure an acknowledged violation in a timely manner, you can file suit against the public body in the Civil Division of the Superior Court in the county where the alleged violation took place. The suit must be brought within one year after

the meeting at which the violation occurred or to which the violation relates. The court will then decide whether a violation occurred, whether a declaratory judgment or injunctive relief is appropriate, and whether circumstances require the public body to pay attorney's fees and litigation costs. 1 V.S.A. § 314(c), (d).

Where can I go to ask a question?

Here at the Secretary of State's Office, it is our pleasure to help towns and citizens engage in respectful, open conversations around the sometimes difficult business of dealing with local government matters. Even though emotions may run high and opinions are deeply held, we are all neighbors and Vermonters, in the end.

We are happy to assist anyone who calls by pointing out the relevant portions of the law and by providing these publications as guidance. Please feel free to call us with your questions. However, understand that we cannot give legal advice and always recommend you consult your own attorney. If you hold a position in municipal government, you may contact the Vermont League of Cities and Towns' Municipal Assistance Center at (802) 229-9111 or info@vlct.org.

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