

Vermont Citizens Advisory Committee

on

Lake Champlain's Future

COMMITTEE MEMBER MANUAL

Approved October 3, 2018

Membership revised July , 2021 along with statutory updates

Vermont Citizens Advisory Committee on Lake Champlain's Future

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

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ENABLING LEGISLATION

Vermont General Assembly

Statutes Annotated

Title 10: Conservation and Development

Chapter 63: Vermont Citizens Advisory Committee On Lake Champlain's Future

§ 1960. Vermont Citizens Advisory Committee on Lake Champlain's future created

(a) The Vermont Citizens Advisory Committee on Lake Champlain's future is created to gather and disseminate information and make recommendations about the condition and management of the waters of the Lake Champlain basin region. The Advisory Committee shall consist of 14 members: two Senators appointed by the Committee on Committees, two Representatives appointed by the Speaker of the House, and ten Vermont citizens, including one recommended by the Secretary of Agriculture, Food and Markets, who come from a variety of geographic locations in Vermont appointed by the Governor with advice and consent of the Senate. The Advisory Committee shall elect a chair by a majority vote of its members. Legislative committee members shall serve two-year terms that coincide with their term of office, or until the biennial appointment of successors. Other Advisory Committee members shall be appointed for three-year terms, except that initial appointments shall be for staggered terms.

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

(c) The Secretary, in consultation with the Advisory Committee, may appoint an executive director who shall be an exempt State employee and who shall report to the Secretary.

(d) The Advisory Committee shall be assigned to the Agency of Natural Resources for budgetary and administrative purposes.

(e) The Advisory Committee shall present a proposed budget to the Secretary before September 15 of each year.

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

§ 1961. Powers and duties

(a) The Advisory Committee shall:

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

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

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

(C) Level and impact of aquatic nuisance infestations.

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

(E) Impact of shoreline development and marinas.

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

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

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

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

(3) Act as the Citizens Advisory Committee to the Joint Committee created in the memorandum of understanding on environmental cooperation on the management of Lake Champlain, and signed by the Governor of Vermont, Governor of New York, and the Premier of Quebec on August 23, 1988. The Advisory Committee shall also work with the New York and Quebec representatives of the Lake Champlain Citizens Advisory Committee created as a result of the memorandum of understanding.

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

(A) Address management concerns identified under this subsection.

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

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

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

(5) On or before June 15, 1991 and every January thereafter present a report to the Vermont General Assembly. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subdivision. The report shall include the following:

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

(B) findings of pertinent research.

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

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

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

(7) Act as a Citizen's Advisory committee to the federal Lake Champlain Management Conference created in the Lake Champlain Special Designation Act of 1990 (Pub. L. No. 101-596). The Advisory Committee shall review the activities of the Conference and make appropriate recommendations to the Conference members. After June 15, 1991,

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

(b) The Advisory Committee may:

(1) Contract for studies and prepare reports on existing or potential problems within the basin. In contracting for studies the Advisory Committee shall follow public bidding procedures as prescribed for Executive Branch agencies by the Secretary of Administration.

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

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

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

(5) Work cooperatively with governmental and other groups having jurisdiction over or interested in the management and quality of Lake Champlain. (Added 1989, No. 265 (Adj. Sess.), § 1; amended 1991, No. 27; 2013, No. 142 (Adj. Sess.), § 20.)

United States Code

Title 33-Navigation and Navigable Waters

§1270 Lake Champlain Basin Program

(a) Establishment

(1) In general

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

(2) Implementation

The Administrator –

- (A)** may provide support to the State of Vermont, the State of New York, and the New England Interstate Water Pollution Control Commission for the implementation of the Lake Champlain Basin Program; and
- (B)** shall coordinate actions of the Environmental Protection Agency under subparagraph (A) with the actions of other appropriate Federal agencies.

(b) Membership

The Members of the Management Conference shall be comprised of –

- (1)** the Governors of the States of Vermont and New York;
- (2)** each interested Federal agency, not to exceed a total of five members;
- (3)** the Vermont and New York Chairpersons of the Vermont, New York, Quebec Citizens Advisory Committee for the Environmental Management of Lake Champlain;
- (4)** four representatives of the State legislature of Vermont;
- (5)** four representatives of the State legislature of New York;
- (6)** six persons representing local governments having jurisdiction over any land or water within the Lake Champlain basin, as determined appropriate by the Governors; and
- (7)** eight persons representing affected industries, nongovernmental organizations, public and private educational institutions, and the general public, as determined appropriate by the trigovernmental Citizens Advisory Committee for the Environmental Management of Lake Champlain, but not to be current members of the Citizens Advisory Committee.

(c) Technical Advisory Committee

- (1)** The Management Conference shall, not later than one hundred and twenty days after November 16, 1990, appoint a Technical Advisory Committee.
- (2)** Such Technical Advisory Committee shall consist of officials of: appropriate departments and agencies of the Federal Government; the State governments of New York and Vermont; and governments of political subdivisions of such States; and public and private research institutions.

(d) Research program

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

(e) Pollution prevention, control, and restoration plan

- (1)** Not later than three years after November 16, 1990, the Management Conference shall publish a pollution prevention, control, and restoration plan for Lake Champlain.
- (2)** The Plan developed pursuant to this section shall –
 - (A)** identify corrective actions and compliance schedules addressing point and nonpoint sources of pollution necessary to restore and maintain the chemical, physical, and biological integrity of water quality, a

balanced, indigenous population of shellfish, fish and wildlife, recreational, and economic activities in and on the lake;

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

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

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

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

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

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

(4) Not less than one hundred and twenty days after the publication of the Plan required pursuant to this section, the Administrator shall approve such plan if the plan meets the requirements of this section and the Governors of the States of New York and Vermont concur.

(5) Upon approval of the plan, such plan shall be deemed to be an approved management program for the purposes of section 1329(h) of this title and such plan shall be deemed to be an approved comprehensive conservation and management plan pursuant to section 1330 of this title.

(f) Grant assistance

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

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

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

(4) The Administrator may establish such requirements for the administration of grants as he determines to be appropriate.

(g) Definitions

In this section:

(1) Lake Champlain Basin Program

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

(2) Lake Champlain drainage basin

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

(3) Plan

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

(h) No effect on certain authority

Nothing in this section –

- (1) affects the jurisdiction or powers of –
 - (A) any department or agency of the Federal Government or any State government; or
 - (B) any international organization or entity related to Lake Champlain created by treaty or memorandum to which the United States is a signatory;
- (2) provides new regulatory authority for the Environmental Protection Agency; or
- (3) affects section 304 of the Great Lakes Critical Programs Act of 1990 (Public Law 101-596; 33 U.S.C. 1270 note).

(i) Authorization

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

- (1) \$2,000,000 for each of fiscal years 1991, 1992, 1993, 1994, and 1995;
- (2) such sums as are necessary for each of fiscal years 1996 through 2003; and
- (3) \$11,000,000 for each of fiscal years 2004 through 2008.

(June 30, 1948, ch.758, title I, §120, as added Pub. L. 101-596, title III, §303, Nov. 16, 1990, 104 Stat. 3006; amended Pub. L. 107-303, title II, §202, Nov. 27, 2002, 116 Stat. 2358.)

GOVERNANCE POLICIES

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

Attendance and Participation Policy

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

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

Conflicts of Interest Policy

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

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

In general, member:

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

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

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

The Vermont Statutes Online

Title 1: General Provisions

Chapter 5: Common Law; General Rights

Subchapter 1: Generally

§ 271. Common law adopted

So much of the common law of England as is applicable to the local situation and circumstances and is not repugnant to the constitution or laws shall be laws in this State and courts shall take notice thereof and govern themselves accordingly.

§ 272. Equality of privilege

In cases proper for the cognizance of the civil authority and the courts of judicature in this State, citizens of the United States shall be equally entitled to the privileges of law and justice with citizens of this State.

§ 273. Eligibility to hold office

A person shall not be debarred on account of sex from holding any office or position of trust or responsibility under the State, including U.S. Senator and Representative to Congress or any county, town, city, village, town school district, or incorporated fire, lighting, or school district office.

Subchapter 2: Public Information

§ 310. Definitions

As used in this subchapter:

(1) "Business of the public body" means the public body's governmental functions, including any matter over which the public body has supervision, control, jurisdiction, or advisory power.

(2) "Deliberations" means weighing, examining, and discussing the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.

(3)(A) "Meeting" means a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action.

(B) "Meeting" shall not mean any communication, including in person or through e-mail, telephone, or teleconferencing, between members of a public body for the purpose of scheduling a meeting, organizing an agenda, or distributing materials to discuss at a meeting, provided that:

(i) no other business of the public body is discussed or conducted; and

(ii) such a communication that results in written or recorded information shall be available for inspection and copying under the Public Records Act as set forth in chapter 5, subchapter 3 of this title.

(C) "Meeting" shall not mean occasions when a quorum of a public body attends social gatherings, conventions, conferences, training programs, press conferences, media events, or otherwise gathers, provided that the public body does not discuss specific business of the public body that, at the time of the exchange, the participating members expect to be business of the public body at a later time.

(D) "Meeting" shall not mean a gathering of a quorum of a public body at a duly warned meeting of another public body, provided that the attending public body does not take action on its business.

(4) "Public body" means any board, council, or commission of the State or one or more of its political subdivisions, any board, council, or commission of any agency, authority, or instrumentality of the State or one or more of its political subdivisions, or any committee of any of the foregoing boards, councils, or commissions, except that "public body" does not include councils or similar groups established by the Governor for the sole purpose of advising the Governor with respect to policy.

(5) "Publicly announced" means that notice is given to an editor, publisher, or news director of a newspaper or radio station serving the area of the State in which the public body has jurisdiction, and to any person who has requested under subdivision 312(c)(5) of this title to be notified of special meetings.

(6) "Quasi-judicial proceeding" means a proceeding which is:

(A) a contested case under the Vermont Administrative Procedure Act; or

(B) a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunity to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, and the result of which is appealable by a party to a higher authority. (Added 1987, No. 256 (Adj. Sess.), § 1; amended 2013, No. 143 (Adj. Sess.), § 1; 2017, No. 166 (Adj. Sess.), § 1.)

§ 311. Declaration of public policy; short title

VERMONT GENERAL ASSEMBLY

(a) In enacting this subchapter, the legislature finds and declares that public commissions, boards, and councils and other public agencies in this State exist to aid in the conduct of the people's business and are accountable to them pursuant to Chapter I, Article VI of the Vermont Constitution.

(b) This subchapter may be known and cited as the Vermont Open Meeting Law. (Amended 1979, No. 151 (Adj. Sess.), § 1, eff. April 24, 1980.)

§ 312. Right to attend meetings of public agencies

(a)(1) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. No resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at such open meeting, except as provided under subdivision 313(a)(2) of this title. A meeting of a public body is subject to the public accommodation requirements of 9 V.S.A. chapter 139. A public body shall electronically record all public hearings held to provide a forum for public comment on a proposed rule, pursuant to 3 V.S.A. § 840. The public shall have access to copies of such electronic recordings as described in section 316 of this title.

(2) Participation in meetings through electronic or other means.

(A) As long as the requirements of this subchapter are met, one or more of the members of a public body may attend a regular, special, or emergency meeting by electronic or other means without being physically present at a designated meeting location.

(B) If one or more members attend a meeting by electronic or other means, such members may fully participate in discussing the business of the public body and voting to take an action, but any vote of the public body that is not unanimous shall be taken by roll call.

(C) Each member who attends a meeting without being physically present at a designated meeting location shall:

(i) identify himself or herself when the meeting is convened; and

(ii) be able to hear the conduct of the meeting and be heard throughout the meeting.

(D) If a quorum or more of the members of a public body attend a meeting without being physically present at a designated meeting location, the agenda required under subsection (d) of this section shall designate at least one physical location where a member of the public can attend and participate in the meeting.

At least one member of the public body, or at least one staff or designee of the public body, shall be physically present at each designated meeting location.

(b)(1) Minutes shall be taken of all meetings of public bodies. The minutes shall cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting. Minutes shall include at least the following minimal information:

(A) all members of the public body present;

(B) all other active participants in the meeting;

(C) all motions, proposals, and resolutions made, offered, and considered, and what disposition is made of same; and

(D) the results of any votes, with a record of the individual vote of each member if a roll call is taken.

(2) Minutes of all public meetings shall be matters of public record, shall be kept by the clerk or secretary of the public body, and shall be available for inspection by any person and for purchase of copies at cost upon request after five calendar days from the date of any meeting. Meeting minutes shall be posted no later than five calendar days from the date of the meeting to a website, if one exists, that the public body maintains or has designated as the official website of the body. Except for draft minutes that have been substituted with updated minutes, posted minutes shall not be removed from the website sooner than one year from the date of the meeting for which the minutes were taken.

(c)(1) The time and place of all regular meetings subject to this section shall be clearly designated by statute, charter, regulation, ordinance, bylaw, resolution, or other determining authority of the public body, and this information shall be available to any person upon request. The time and place of all public hearings and meetings scheduled by all Executive Branch State agencies, departments, boards, or commissions shall be available to the public as required under 3 V.S.A. § 2222(c).

(2) The time, place, and purpose of a special meeting subject to this section shall be publicly announced at least 24 hours before the meeting. Municipal public bodies shall post notices of special meetings in or near the municipal clerk's office and in at least two other designated public places in the municipality, at least 24 hours before the meeting. In addition, notice shall be given, either orally or in writing, to each member of the public body at least 24 hours before the meeting, except that a member may waive notice of a special meeting.

(3) Emergency meetings may be held without public announcement, without posting of notices, and without 24-hour notice to members, provided some public notice thereof is given as soon as possible before any such meeting. Emergency meetings may be held only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention by the public body.

(4) Any adjourned meeting shall be considered a new meeting, unless the time and place for the adjourned meeting is announced before the meeting adjourns.

(5) A person may request in writing that a public body notify the person of special meetings of the public body. The request shall apply only to the calendar year in which it is made, unless made in December, in which case it shall apply also to the following year.

(d)(1) At least 48 hours prior to a regular meeting, and at least 24 hours prior to a special meeting, a meeting agenda shall be:

(A) posted to a website, if one exists, that the public body maintains or designates as the official website of the body; and

(B) in the case of a municipal public body, posted in or near the municipal office and in at least two other designated public places in the municipality.

(2) A meeting agenda shall be made available to a person prior to the meeting upon specific request.

(3)(A) Any addition to or deletion from the agenda shall be made as the first act of business at the meeting.

(B) Any other adjustment to the agenda may be made at any time during the meeting.

(e) Nothing in this section or in section 313 of this title shall be construed as extending to the Judicial Branch of the Government of Vermont or of any part of the same or to the Public Utility Commission; nor shall it extend to the deliberations of any public body in connection with a quasi-judicial proceeding; nor shall anything in this section be construed to require the making public of any proceedings, records, or acts which are specifically made confidential by the laws of the United States of America or of this State.

(f) A written decision issued by a public body in connection with a quasi-judicial proceeding need not be adopted at an open meeting if the decision will be a public record.

(g) The provisions of this subchapter shall not apply to site inspections for the purpose of assessing damage or making tax assessments or abatements, clerical work, or work assignments of staff or other personnel. Routine, day-to-day administrative matters that do not require action by the public body may be conducted outside a duly warned meeting, provided that no money is appropriated, expended, or encumbered.

(h) At an open meeting, the public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting, as long as order is maintained. Public comment shall be subject to reasonable rules established by the chairperson. This subsection shall not apply to quasi-judicial proceedings.

(i) Nothing in this section shall be construed to prohibit the Parole Board from meeting at correctional facilities, with attendance at the meeting subject to rules regarding access and security established by the superintendent of the facility. (Amended 1973, No. 78, § 1, eff. April 23, 1973; 1979, No. 151 (Adj. Sess.), § 2; 1987, No. 256 (Adj. Sess.), § 2; 1997, No. 148 (Adj. Sess.), § 64, eff. April 29, 1998; 1999, No. 146 (Adj. Sess.), § 7; 2013, No. 143 (Adj. Sess.), § 2; 2015, No. 129 (Adj. Sess.), § 1, eff. May 24, 2016.)

§ 313. Executive sessions

(a) No public body may hold an executive session from which the public is excluded, except by the affirmative vote of two-thirds of its members present in the case of any public body of State government or of a majority of its members present in the case of any public body of a municipality or other political subdivision. A motion to go into executive session shall indicate the nature of the business of the executive session, and no other matter may be considered in the executive session. Such vote shall be taken in the course of an open meeting and the result of the vote recorded in the minutes. No formal or binding action shall be taken in executive session except for actions relating to the securing of real estate options under subdivision (2) of this subsection. Minutes of an executive session need not be taken, but if they are, the minutes shall, notwithstanding subsection 312(b) of this title, be exempt from public copying and inspection under the Public Records Act. A public body may not hold an executive session except to consider one or more of the following:

(1) after making a specific finding that premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage:

(A) contracts;

(B) labor relations agreements with employees;

(C) arbitration or mediation;

(D) grievances, other than tax grievances;

(E) pending or probable civil litigation or a prosecution, to which the public body is or may be a party;

(F) confidential attorney-client communications made for the purpose of providing professional legal services to the body;

(2) the negotiating or securing of real estate purchase or lease options;

(3) the appointment or employment or evaluation of a public officer or employee, provided that the public body shall make a final decision to hire or appoint a public officer or employee in an open meeting and shall explain the reasons for its final decision during the open meeting;

(4) a disciplinary or dismissal action against a public officer or employee; but nothing in this subsection shall be construed to impair the right of such officer or employee to a public hearing if formal charges are brought;

(5) a clear and imminent peril to the public safety;

(6) records exempt from the access to public records provisions of section 316 of this title; provided, however, that discussion of the exempt record shall not itself permit an extension of the executive session to the general subject to which the record pertains;

(7) the academic records or suspension or discipline of students;

(8) testimony from a person in a parole proceeding conducted by the Parole Board if public disclosure of the identity of the person could result in physical or other harm to the person;

(9) information relating to a pharmaceutical rebate or to supplemental rebate agreements, which is protected from disclosure by federal law or the terms and conditions required by the Centers for Medicare and Medicaid Services as a condition of rebate authorization under the Medicaid program, considered pursuant to 33 V.S.A. §§ 1998(f)(2) and 2002(c);

(10) security or emergency response measures, the disclosure of which could jeopardize public safety.

(b) Attendance in executive session shall be limited to members of the public body, and, in the discretion of the public body, its staff, clerical assistants and legal counsel, and persons who are subjects of the discussion or whose information is needed.

(c) The Senate and House of Representatives, in exercising the power to make their own rules conferred by Chapter II of the Vermont Constitution, shall be governed by the provisions of this section in regulating the admission of the public as provided in Chapter II, § 8 of the Constitution. (Amended 1973, No. 78, § 2, eff. April 23, 1973; 1979, No. 151 (Adj. Sess.), § 3, eff. April 24, 1980; 1987, No. 256 (Adj. Sess.), §§ 3, 4; 1997, No. 148 (Adj. Sess.), § 65, eff. April 29, 1998; 2005, No. 71, § 308a, eff. June 21, 2005; 2011, No. 59, § 7; 2013, No. 143 (Adj. Sess.), § 3; 2015, No. 23, § 1; 2017, No. 95 (Adj. Sess.), § 1, eff. April 11, 2018.)

§ 314. Penalty and enforcement

(a) A person who is a member of a public body and who knowingly and intentionally violates the provisions of this subchapter, a person who knowingly and intentionally violates the provisions of this subchapter on behalf or at the behest of a public body, or a person who knowingly and intentionally participates in the wrongful exclusion of any person or persons from any meeting subject to this subchapter shall be guilty of a misdemeanor and shall be fined not more than \$500.00.

(b)(1) Prior to instituting an action under subsection (c) of this section, the Attorney General or any person aggrieved by a violation of the provisions of this subchapter shall provide the public body written notice that alleges a specific violation of this subchapter and requests a specific cure of such violation. The public body will not be liable for attorney's fees and litigation costs under subsection (d) of this section if it cures in fact a violation of this subchapter in accordance with the requirements of this subsection.

(2) Upon receipt of the written notice of alleged violation, the public body shall respond publicly to the alleged violation within 10 calendar days by:

(A) acknowledging the violation of this subchapter and stating an intent to cure the violation within 14 calendar days; or

(B) stating that the public body has determined that no violation has occurred and that no cure is necessary.

(3) Failure of a public body to respond to a written notice of alleged violation within 10 calendar days shall be treated as a denial of the violation for purposes of enforcement of the requirements of this subchapter.

(4) Within 14 calendar days after a public body acknowledges a violation under subdivision (2)(A) of this subsection, the public body shall cure the violation at an open meeting by:

(A) either ratifying, or declaring as void, any action taken at or resulting from:

(i) a meeting that was not noticed in accordance with subsection 312(c) of this title; or

(ii) a meeting that a person or the public was wrongfully excluded from attending; or

(iii) an executive session or portion thereof not authorized under subdivisions 313(a)(1)-(10) of this title; and

(B) adopting specific measures that actually prevent future violations.

(c) Following an acknowledgment or denial of a violation and, if applicable, following expiration of the 14-calendar-day cure period for public bodies acknowledging a violation, the Attorney General or any person aggrieved by a violation of the provisions of this subchapter may bring an action in the Civil Division of the Superior Court in the county in which the violation has taken place for appropriate injunctive relief or for a declaratory judgment. An action may be brought under this section no later than one year after the meeting at which the alleged violation occurred or to which the alleged violation relates. Except as to cases the court considers of greater importance, proceedings before the Civil Division of the Superior Court, as authorized by this section and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(d) The court shall assess against a public body found to have violated the requirements of this subchapter reasonable attorney's fees and other litigation costs reasonably incurred in any case under this subchapter in which the complainant has substantially prevailed, unless the court finds that:

(1)(A) the public body had a reasonable basis in fact and law for its position; and

(B) the public body acted in good faith. In determining whether a public body acted in good faith, the court shall consider, among other factors, whether the public body responded to a notice of an alleged violation of this subchapter in a timely manner under subsection (b) of this section; or

(2) the public body cured the violation in accordance with subsection (b) of this section. (Amended 1979, No. 151 (Adj. Sess.), § 4, eff. April 24, 1980; 1987, No. 256 (Adj. Sess.), § 5; 2013, No. 143 (Adj. Sess.), § 4; 2015, No. 129 (Adj. Sess.), § 2, eff. May 24, 2016; 2017, No. 113 (Adj. Sess.), § 1.)