Joint Guidance on 2024 Updates to Open Meeting Law (ACT 133) and Frequently Asked Questions

Transparency is an essential element of an open and democratic government. In Vermont, the Open Meeting Law ensures that meetings of governmental bodies remain accessible by declaring that "[a]ll 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." 1 V.S.A. § 312(a). The Open Meeting Law, and its requirements, empower the public to play an effective role, not only as an active participant in government but as a check on it. The law is found in 1 V.S.A. §§ 310-314.

The Open Meeting Law has recently been updated to change with the times. In response to the sunsetting on July 1st of the temporary authority to allow local public bodies to meet remotely during the COVID pandemic, the Legislature passed, and the Governor signed into law, Act 133 (S.55). Act 133, which is effective July 1st of 2024, makes permanent the ability of some local and State public bodies (e.g. advisory bodies) to meet without designating a physical meeting location (i.e., remotely), while imposing upon others (non-advisory bodies) the requirement to record and post their meetings. These are just some of the highlights of the new law.

In a shared recognition of the need to help their respective constituencies familiarize and comply with these changes, the Vermont Secretary of State's Office (SOS), in conjunction with the Vermont League of Cities and Towns (VLCT) and the Vermont School Boards Association (VSBA), developed the following Act 133 (S.55) Open Meeting Law FAQs. Where applicable, different requirements for local and State public bodies are addressed.

Please use the appropriate contact listed below for additional questions and information:

- VLCT member municipal officials: 1-800-649-7915 or info@vlct.org
- VSBA member school board officials: 802-363-5777 or denglander@vtvsba.org
- VT SOS assists citizens as well as State and municipal officials: 802-828-2363 or at sos.vermont.gov/secretary-s-desk/contact/

What is Act 133 (S.55) of 2024?

The Open Meeting Law's purpose is to ensure a transparent and accountable government. Building on

lessons learned from the COVID-19 pandemic, the Vermont Legislature has updated the Open Meeting Law to recognize that hybrid and remote access to meetings can strengthen civic engagement and support transparent, efficient decision-making.

Act 133 amends the Open Meeting Law to create two different types of public bodies: nonadvisory bodies and advisory bodies. Act 133 defines an "advisory body" as a "public body that does not have supervision, control, or jurisdiction over legislative, quasi-judicial, tax, or budgetary matters." 1 V.S.A. § 310(1). An advisory body, by its very name, advises, which means that it lacks final statutory decision-making authority. If a public body has final decision-making authority over any legislative, quasi-judicial, tax, or budgetary matter then it is categorically not an advisory body, which makes it, in turn, a nonadvisory body. *Although referred to as nonadvisory bodies within Act 133, we refer to those bodies as decision-making bodies for ease of understanding and distinction from advisory bodies.*

Act 133 allows "advisory bodies" to meet electronically without a physical meeting location (i.e., remotely) and requires State decision-making bodies to conduct hybrid meetings. (Local public bodies may, but are not required to, conduct hybrid meetings.) It also requires local and State decision-making bodies to electronically record their meetings and post the recordings in a designated electronic location for a minimum of 30 days following the approval and posting of the official minutes of the meeting that was recorded. Act 133 allows all public bodies (whether decision-making or advisory) to meet remotely in response to a state of emergency or "local incident." It requires all public bodies to provide electronic/telephonic or in-person meeting access options to a regularly scheduled meeting if a timely request is made by local residents, members of the press, or members of the public body.

In addition, all municipalities must post an explanation of the procedures for submitting notice of an Open Meeting Law violation to the public body or the Vermont Attorney General ((802) 828-3171). And local legislative body chairs, municipal managers, and mayors, as well as chairs of State decision-making bodies, must complete annual training. This training will be provided by the Secretary of State's office beginning in January 2025.

What provisions of the Open Meeting Law specifically does Act 133 (S.55) of 2024 change?

Pursuant to Act 133:

- State and local advisory public bodies may hold remote-only regular, special, or emergency meetings, by electronic or other means. When holding a remote-only meeting:
    - the public body does not have to designate a physical meeting location where the public can attend; and
    - the members and staff of the public body are not required to be physically present at a designated meeting location. 1 V.S.A. § 312(a)(4).
- Starting January 1, 2025, State decision-making (non-advisory) bodies must hold all regular and special meetings as hybrid meetings, designating both a physical meeting location and an electronic meeting platform.

- Any public body may hold remote-only emergency meetings, or a remote-only meeting in response to a local incident or state of emergency, by electronic or other means. When holding a remote-only meeting:
  - the public body does not have to designate a physical meeting location where the public can attend; and
  - the members and staff of the public body are not required to be physically present at a designated meeting location. 1 V.S.A. § 312(a)(4).
- When holding a remote-only meeting or a hybrid meeting under Act 133, public bodies must:
  - use an electronic platform that allows direct access, attendance, and participation of the public;
  - allow the public to access the meeting by telephone; and
  - include and post information that enables the public to directly access the designated electronic platform in either its published agenda or public notice for the meeting. 1 V.S.A. § 312(a)(5).
- State and local decision-making bodies must electronically record their meetings. The recording must be posted in a designated electronic location for a minimum of 30 days following the approval and posting of the official minutes of the meeting which was recorded. 1 V.S.A. § 312(a)(6). Local decision-making public bodies may choose to record in either audio or video form, or, if compliance would constitute "undue hardship," may waive the recording and posting requirements.
- A resident of the jurisdiction served by the public body, or a member of the public body or the press, may request that any public body provide additional access to a regular meeting, i.e., by designating a physical location for a remote-only meeting or by providing electronic/telephonic access to an in-person meeting.
- State chairs of decision-making bodies, chairs of municipal legislative bodies (e.g. selectboards, school boards, city councils, board of trustees, prudential committees, etc.), municipal managers, and mayors must participate in annual, professional Open Meeting Law training starting January 1, 2025. 1 V.S.A. § 312(k).
- Each municipality must post on its website (if it maintains one):
  - an explanation of the procedures for submitting notice of an Open Meeting Law violation to the public body or the Attorney General; and
  - a copy of the text of 1 V.S.A. § 314. 1 V.S.A. § 314(e).

All other requirements of the Open Meeting Law not explicitly overridden or relaxed by this law remain in effect and must be followed.

When do the provisions of Act 133 (S.55) of 2024 take effect?

Act 133 takes effect on July 1, 2024, except for:

- Training requirements are effective January 1, 2025.

- Hybrid meeting requirements for State decision-making public bodies are effective January 1, 2025.

To whom does Act 133 (S.55) of 2024 apply?

Act 133 applies to every State and municipal public body. A "municipality" includes every city, town, village, fire district, town school district, and every other governmental incorporated unit. 1 V.S.A. § 126.

A public body is any board, council, commission, committee, or subcommittee of the State or a municipality. 1 V.S.A. § 310(4). This includes bodies that are specifically mentioned in state statutes and municipal charters such as selectboards, school boards, prudential committees, planning commissions, conservation commissions, cemetery commissions, development review boards, boards of civil authority, boards of health, zoning boards of adjustment, etc. It also includes committees and subcommittees of those groups. The law does not apply to community justice boards or community justice centers. 24 V.S.A. § 1964(b).

What's the difference between an "advisory" and a "decision-making" public body?

Act 133 draws a distinction between advisory and decision-making (nonadvisory) public bodies by imposing stricter requirements on decision-making bodies.

Advisory body

Act 133 defines an "advisory body" as a "public body that does *not* have supervision, control, or jurisdiction over legislative, quasi-judicial, tax, or budgetary matters." 1 V.S.A. § 310(1). An advisory body, by its very name, advises, which means that it lacks final statutory decision-making authority. If a public body has final decision-making authority over any legislative, quasi-judicial, tax, or budgetary matter then it is categorically not an advisory body, which makes it, in turn, a decision-making body.

The determination of whether a body is advisory or decision-making can be tricky. If you are unsure if you are an advisory body, please reach out to your legal counsel. Alternatively, bodies can follow the requirements for decision-making bodies.

Decision-making (nonadvisory) body

Though not explicitly defined by Act 133, a "non-advisory body" is a decision-making body, one that *does* have supervision, control, or jurisdiction over legislative, quasi-judicial, tax, or budgetary matters. Making the call here will likely necessitate a short, fact-based determination. For example, a planning commission that hears applications for development review would be considered a decision-making body because it exercises control over some quasi-judicial matters, even though most of its time may be spent advising the selectboard on the adoption, amendment, or repeal of the town plan and zoning

regulations. Some other examples of decision-making public bodies include the legislative bodies (selectboard, school board, city council, village trustees, prudential committee, and alderman), cemetery commission, library trustees, board of listers, board of civil authority, board of abatement, water and sewer commission, and local board of health.

Can a decision-making body meet electronically without designating a physical meeting location?

Yes, but only to attend an emergency meeting of the body or when necessary to respond to a local incident or a declared state of emergency.

Does a local public body ever have to meet remotely (i.e., without designating a physical meeting location)?

No. A local public body, whether advisory or decision-making, is never required to meet remotely (i.e. without designating a physical meeting location). It *may* meet remotely when the circumstances detailed above warrant. This is distinct from the hybrid requirement for State decision-making bodies, which necessarily includes remote access.

Can a local public body still hold hybrid meetings?

Yes. This has not changed. A quorum or more of a public body may continue to participate in a meeting electronically, provided that:

- the posted agenda designates at least one physical location where the public can attend and participate in the meeting;
- at least one body member, staff person, or other designee is present at that physical location throughout the meeting;
- each member that attends electronically identifies themselves when the meeting is convened and must be able to hear and be heard throughout the meeting; and any voting that occurs at the meeting that is not unanimous must be done by roll call 1 V.S.A. §312(a)(2).

This is a pre-existing provision of the Open Meeting Law not affected by the sunsetting of Act 1 of 2023 or the enactment of Act 133 (S.55).

What is a "local incident"?

Act 133 defines a "local incident" as "a weather event, loss of power or telecommunication services, public health emergency, public safety threat, received threat that a member of the public body believes may place the member or another person in reasonable apprehension of death or serious bodily injury, or other event that directly impedes the ability of a public body to hold a meeting electronically or in a designated physical location." 1 V.S.A. § 312a(a)(4).

What does a public body need to do before it can meet electronically, without designating a physical meeting location, in response to a local incident?

Before meeting electronically without designating a physical meeting location, in response to a local incident, the highest ranking elected or appointed officer of the public body (e.g. chair, or vice-chair if the chair is not available) must first make a formal written finding and announcement of the local incident which includes the basis for the finding. These written findings should be permanently retained.

How does someone request a physical meeting location or electronic access to a public meeting?

A resident of the geographic area in which the public body has jurisdiction, or a member of the public body or the press, may request in-person or remote access to the public body's next regular meeting by submitting to the public body a request, in writing, at least two business days before the meeting. The request should specify what type of access is sought (e.g. a designated physical location, a telephone conference call, access via an electronic meeting platform) and provide any relevant contact information. A requestor is not required to provide a basis for the request.

Does a public body have to designate a physical meeting location or provide electronic access to its meetings upon request?

It depends on the circumstances. A resident of the jurisdiction served by the public body, a member of the public body, or a member of the press may request that a public body provide additional access to a regular meeting by designating a physical location for a remote-only meeting or by providing electronic/telephonic access to an in-person meeting. The request must be made in writing no less than two business days before the meeting to be considered. Such requests only apply to the public body's next regularly scheduled meeting and not to a series of regular meetings, special meetings, emergency meetings, or field visits. Because the requests only pertain to regularly scheduled meetings, they do not pertain to special or emergency meetings of a public body.

- **The public body must grant the request unless:**
  - there is an all-hazards event or a declared state of emergency;
  - there is a local incident; or
  - for a municipal public body, compliance would impose an undue hardship.

Does a granted request for a physical meeting location or electronic access apply to just the requestor or is access granted to the public at large?

Since the underlying policy of Open Meeting Law is access to public meetings expanded access should apply to the public at large unless it creates undue hardship. Generally, requests for physical access

apply to the general public, whereas requests for electronic access may be more complicated and may need to only apply to the individual requestor.

Does Act 133 require a public body to designate a physical meeting location or provide electronic access to its hearings upon request?

No. Even though hearings are meetings, in that a hearing represents 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," a hearing is not a "regular meeting" (i.e., a meeting that takes place at a regularly occurring, pre-arranged time and day). 1 V.S.A. § 310(3)(A). The right to request that a public body designate a physical meeting location or provide electronic or telephonic access only applies to a regular meeting of a public body.

Please note that if a hearing is held during a regular meeting, requests for alternate access to the regular meeting must be honored as the law requires.

What constitutes an "undue hardship" for a municipality?

The law defines an "undue hardship" as "an action required to achieve compliance would require significant difficulty or expense in light of factors including the overall size of the entity, sufficient personnel and staffing availability, the entity's budget, and the costs associated with compliance." 1 V.S.A. § 310(9).

Since a municipality claiming this exemption has the burden of proving that compliance would impose an undue hardship, we advise that any municipality claiming an exemption have its legislative body document its finding after hearing relevant supporting evidence during an open, public meeting and record it in the meeting minutes. Given the factors that make up this definition, it's unlikely that, in most circumstances, this exception would apply to any but the smallest of municipalities.

Do all public bodies need to record their meetings?

No. There are different requirements for recording as well as recording formats.

- State decision-making bodies must video record their meetings.
- Local decision-making bodies must record their meetings, unless undue hardship applies, and may choose either audio or video recording format.
- State and local advisory bodies are not required to record their meetings (but may choose to do so).

Do recordings of decision-making meetings need to be posted?

Yes. Decision-making bodies must post a copy of each meeting recording in a designated electronic location for a minimum of 30 days following the approval and posting of the official minutes of the meeting which was recorded.

How does a public body count the 30 days for posting?

The 30 days begin with the approval of the minutes, typically at the next meeting of the public body. If the public body does not approve its minutes, the 30 days begin the day following the next meeting.

How long must decision-making bodies retain meeting recordings?

The recordings of decision-making public body meetings required by Act 133 must be retained for 30 days after the minutes for those meetings have been approved.

In response to Act 133, the Vermont State Archives & Records Administration (VSARA) has developed an updated record schedule specifically to address recordkeeping requirements for public bodies: https://sos.vermont.gov/media/xoqnvt52/grs-2084-1102_publicbodiesadministrating.pdf. A one-page quick reference guide is available here: sos.vermont.gov/municipal-division/open-meetings. For more information about the proper retention and disposition of public records, please visit sos.vermont.gov/vsara/manage/retention-disposition or contact a VSARA Records Specialist at sos.rim@vermont.gov or (802) 828-3700.

Are there any exceptions to this recording and posting requirement?

Yes. A municipality's decision-making bodies do not have to record or post recordings of their meetings if doing so would impose an "undue hardship" on the municipality. The determination process for "undue hardship" is explained above.

Where do we post our recordings if we don't have a website?

If a municipality does not have a website, then its decision-making public bodies need to designate a different electronic location, unless doing so would constitute an undue hardship.

Is a designated electronic location limited to a municipal website?

No. A designated electronic location could include, for example, a community access media site. Many municipalities lack the technology to video record their meetings but are served by community access media who do. The website of a community access media company could be designated as a municipality's official electronic location for the posting of meeting recordings of decision-making public bodies.

One potential complication to this arrangement is that the municipality needs to ensure that the company posts all meeting recordings for the requisite 30 days following the approval and posting of the official minutes. We strongly recommend that the municipality maintain a copy for itself in order to comply with any Public Records Act requests. Community access media companies are not "public bodies" under the law and a municipality cannot abdicate its obligations under either the Open Meeting Law or Public Records Act by imposing them upon another party.

YouTube is another option, as accounts are free to create and maintain. A municipality could create an account for the upload of decision-making public bodies' recordings.

Who designates an electronic location?

It appears from the text of Act 133 that the decision-making public body holding and recording the meeting has the authority to designate the electronic location where the recording will be posted. Since even the smallest of towns can have many decision-making public bodies, this could lead to recordings of public meetings being kept in multiple electronic locations, which makes it more difficult for the public to access them. Accordingly, we recommend that each municipality's legislative body designate one electronic location to which all decision-making public bodies can post their meeting recordings. This is the simplest way to comply with the law.

If a public body, advisory or decision-making, meets remotely for any reason, does it still need to physically post meeting notices and agendas?

Yes, except an affected public body meeting during a local incident or declared state of emergency may post notices and agendas in one or two publicly accessible designated electronic locations in lieu of one or two designated public places, respectively.

For the most part, the Open Meeting Law's notice and agenda requirements have not changed. One exception is that if a public body meets remotely, it must now also post information that enables the public to directly access the designated electronic platform and include this information in either its published agenda or public notice for the meeting.

How can public bodies maintain order during a remote meeting?

The same way it would maintain order during a physical meeting. The chairperson should administer the meeting in accordance with the public body's rules of procedure. The Open Meeting Law requires that the public be given a reasonable opportunity to express their opinion on matters considered by a public body. This has not changed and still applies equally to all meetings, regardless of how they are conducted.

Civility, decorum, and order are all essential elements of a successful public meeting. At times, these elements are difficult to achieve even under the best of circumstances. One of the additional

challenges posed by conducting a remote meeting is the absence or delay of any real-time physical cues. For example, if a meeting is conducted by conference call only, the chairperson is unable to see who has their hand raised to be recognized. Members of the public body and the public must also be mindful not to talk over one another and to speak clearly so that meetings can be properly recorded (if applicable) and that all can hear and be heard throughout the meeting. It's important therefore that the public body review its rules of procedure and amend them if necessary to ensure they are still applicable to remote meetings. More than ever, it is incumbent upon public bodies to educate their own members and those of the public as to its rules of procedure and how they will be enforced.

Does the new recording requirement mean we do not have to take minutes of those meetings?

No. Meetings minutes are still required by the Open Meeting Law. The new recording requirement for meetings of decision-making public bodies is in addition to, not a substitute for, the existing minutes requirement.

Can advisory public bodies continue to meet in physical locations if they so choose?

Yes. The amendments to the Open Meeting Law authorizing remote-only meetings for advisory bodies are permissive, not restrictive. The law does not prevent members of any public body, including advisory ones, from physically gathering in the same location (or from holding a hybrid meeting) to meet, so long as those meetings are also open to the public.

If a member can't attend a remote meeting, can they vote by email or proxy (i.e., have another person vote on behalf of the member)?

No. The law does not allow voting by email or by proxy.

What are some methods or technology public bodies can use for remote meetings?

The law does not specify methods for electronic participation in a remote meeting, except to say that it can be through electronic or other means and that the body must allow the public to access, attend, and participate in a meeting by telephone. Some electronic meeting software options include Zoom, GoToMeeting, RingCentral, DialPad, Skype, FreeConferenceCall.com, and Vast Conference. Public bodies can also contact their local telephone service provider to ask about standard conference call options that use just a telephone system.

We encourage public bodies to use various means concurrently, if possible, to ensure members of the public have options. Broadband is not always a reliable option for Vermonters, so offering a menu of choices to enable access, attendance, and participation in the same meeting, concurrently, is ideal. For instance, a public body can set up a Zoom or Skype video meeting but also have a speaker phone positioned near someone's computer to capture audio for a conference call option. Think creatively

but be sure to provide clear instructions in either the published agenda or public notice for the meeting so everyone is made aware of these options and how to avail themselves of them.

If an advisory body can meet remotely, can it sign documents remotely?

Documents may be signed by a quorum of any public body or by an individual member delegated in writing to have signatory authority by the public body. Generally, whether electronic signatures can be used in the State of Vermont depends on the circumstances. The Vermont Uniform Electronic Transactions Act (VUETA) defines an "electronic signature" as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." Under VUETA, if a law requires a signature and does not specify non-electronic form, then an electronic signature will suffice, provided that certain requirements (e.g. relating to consent, record-keeping, security) are met. The full law may be accessed here. The Vermont State Archives and Records Administration (VSARA) also has an electronic signatures best practices guide here. For additional guidance on best practices and answers to frequently asked questions regarding electronic signatures, including their retention, please visit VSARA's website.

What are the law's training requirements?

The law requires annual professional training on the topic of Vermont's Open Meeting Law. The law mandates the Secretary of State's office to develop the training and to make it available to municipalities, subdivisions, and public bodies. The training may be in person or on-line, live or recorded. The Secretary of State will have this training available in the Winter of 2025.

Do all government officers have to undergo training?

No. State chairs of decision-making bodies must satisfy the law's mandatory annual training requirements. The only municipal officers that must do so are the chairs of the legislative bodies (e.g. selectboard, school board, city council, board of trustees, prudential committees, etc.), municipal managers, and mayors. (While Act 133 applies to school boards, the open meeting law training obligation already exists for school board chairs in 16 V.S.A. § 561.)