



**STATE OF VERMONT**  
OFFICE OF LEGISLATIVE COUNCIL

**MEMORANDUM**

To: Representative Timothy Briglin, Chair  
House Committee on Energy and Technology

From: Maria Royle, Legislative Counsel

Date: January 22, 2019

Subject: House Committees - Executive Session

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This memorandum concerns the authority of and procedure for House standing committees to enter into executive session. For background purposes, it begins with a brief discussion of Vermont's Open Meeting Law (OML), 1 V.S.A. §§ 310–314. Because the OML is not applicable to legislative committees, it discusses other sources of authority, including the Vermont Constitution and legislative rules. It then specifies the procedure for entering into executive session, specifically in relation to a potential discussion with the Secretary of Digital Services on issues such as data security and network redundancy.

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The OML requires that, subject to certain exceptions, meetings of public bodies be open to the public. The OML defines "public body" in relevant part as:

“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...”

The position of the Office of Legislative Council (Office) is that, based on the language of the Act, the OML does **not** apply to committees, councils, working groups, etc., comprised entirely of legislators.

Although the General Assembly and its bodies are not subject to the OML, the Vermont Constitution requires that the doors of the State House shall be open for the admission of all persons who behave decently, except only when the welfare of the State may require them to be shut.<sup>1</sup> Thus, meetings of the General Assembly are open to the public and are governed under legislative rules.

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<sup>1</sup> Vt. Const. ch. II, § 8.

House Rules do not specifically address the authority of a House committee to enter into executive session. However, House Rule 88 specifies that a question of parliamentary procedure not covered by the Rules shall be decided according to Mason's Manual of Legislative Procedure.

More specifically, custom and tradition have been to rely on Section 629(2) of Mason's which provides, "[t]he general rule is that a committee cannot exclude other members of the body from its deliberations. Unless the practice of committees to hold closed or secret sessions is clearly established, the committee should secure the definitive authority from the legislative body whenever it desires to hold closed sessions." In addition, Section 630 states in relevant part that, "[c]ommittee meetings are generally open . . . except when considering certain strictly specified subjects where secrecy is required."

Accordingly, a House committee can go into executive session by the affirmative vote of a majority of its members.<sup>2</sup>

### **Procedure for Entering into Executive Session**

When entering into executive session, the Committee should take the following steps:

1. A motion should be made while the meeting is open to the public, stating the nature of the business of the proposed executive session.
  - Suggested text of motion regarding network contracts: "I move that the Committee enter into executive session to discuss provisions of State IT contracts relating to security and network redundancy issues."
  - Suggested text of motion regarding data security: "I move that the Committee enter into executive session to discuss the State's measures to protect data security and related issues."
2. A quorum of the committee must be physically present, and a majority of those present is required in order for the motion to carry. There are nine members on the House Committee on Energy and Technology. Six members constitutes a quorum.
3. The vote on the motion should be taken while the meeting is open to the public, and the results of the vote recorded.
4. If the Committee votes to enter into executive session:

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<sup>2</sup> This is consistent with the opinion of the House Clerk, William MaGill. For comparison, the OML permits public bodies to go into executive session to discuss, among other things, security or emergency response measures, the disclosure of which could jeopardize public safety or to discuss a report or contract or other record that is exempt from disclosure under the Public Records Act. See 1 V.S.A. § 313(a)(10) and (6), respectively. Under the OML, an affirmative vote of two-thirds of members present is required for State government bodies or of a majority for municipal bodies or other political subdivisions. 1 V.S.A. § 313(a).

- The Office recommends that the recording of the meeting be stopped during the executive session.
- The scope of the discussion during the executive session should be restricted to [*network redundancy or data security*], whichever is the reason for entering into executive session. The discussion should not stray into other matters.
- Any formal action taken shall be by roll call vote.

5. Attendance in executive session shall be limited to members of the Committee, 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. A decision on who can be part of the closed session should be made prior to making the motion to go into executive session.