



Open Meetings 2024

Sarah Copeland Hanzas, Secretary of State

S. Lauren Hibbert, Deputy Secretary of State

Jenny Prosser, General Counsel & Director of Municipal Assistance



Agenda

NOW

1 V.S.A. §§ 310-314; Act 1 of 2023
until 7/1/24

**Act 133
(S.55)**

effective 7/1/24

BEYOND

What is the Open Meeting Law?

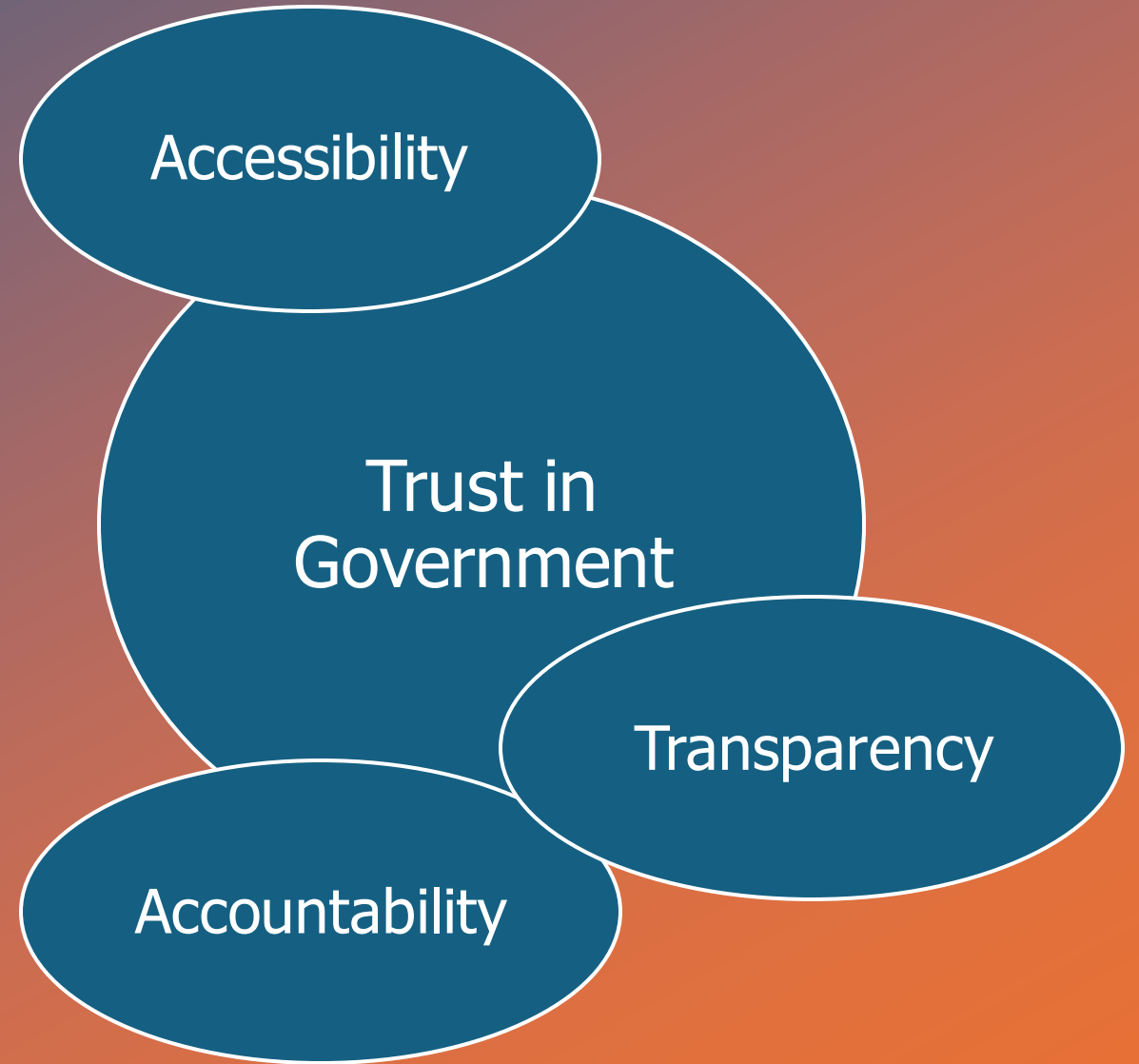


OML Declaration of Public Policy:

...public commissions, boards, councils and other public agencies in this state exist to aid in the conduct of the people's business and are accountable to them...

1 V.S.A. § 311

What does the Open Meeting Law mean?



What does the Open Meeting Law mean?



The intent of the law is to create transparency and accountability in government by requiring public bodies to come to consensus in decision-making before the public and with public participation.

The Open Meeting Law provides that all meetings of a public body are always open to the public, with rare exceptions.




To whom does the OML apply?

ALL PUBLIC BODIES, including State and municipal boards, councils, and commissions. This also includes all committees and subcommittees of these bodies.



But see Act 133 (S.55) of 2024, which sets forth differing requirements based on State/local and nonadvisory/advisory status.



When does the OML apply?



Any time a “quorum” holds a “meeting.”



Quorum = a majority of the entire public body.



Meeting = a gathering of a quorum to discuss business or take action.

Business means the body’s government functions, including matters over which it has supervision, control, jurisdiction, or advisory power.

What is not a meeting?

Are communications through email, telephone, or teleconferencing a “meeting?”



No! IF...

...they are to schedule a meeting, organize an agenda, or distribute materials to discuss at a meeting, AND no other business of the body is discussed or conducted.

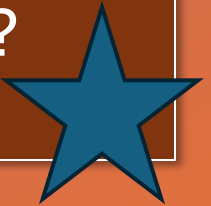
What is not a meeting?

Are social gatherings, conventions, conferences, training programs, press conferences, or media events “meetings”?

No! UNLESS...

...the public body discusses specific business of the public body that, at the time of the exchange, the participating members expect to be the body’s business at a later time.

Is a RETREAT a “meeting?” It depends! What will you discuss?



What is not a meeting?



A meeting does not mean...

...a gathering of a quorum of a public body at a duly warned meeting of another public body, provided that the attending body does not take action on its business.

What is a meeting?

A “meeting” can occur ANYWHERE



It can include any physical, remote, or hybrid location



Including email, text message, and social media conversations



Act 133 (S.55) sets forth location requirements, based on State/local and nonadvisory/advisory status.

Are we
having a
meeting
right now by
accident?

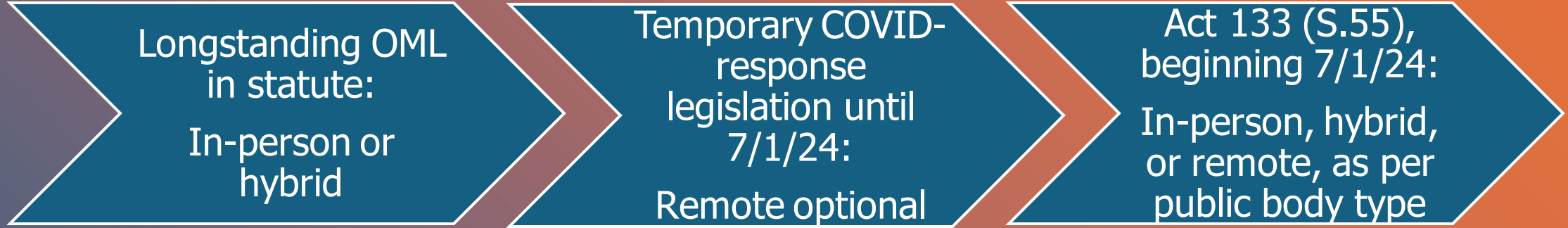
The following are
probably NOT
permissible (but ask
your attorney):

Group emails involving
a quorum discussing
the body's business

Collective
editing of a
document by
a quorum

Participation in a
Facebook group or Front
Porch Forum by a
quorum if the body's
business is discussed

+
•
○



Now that we know we are
having a meeting, where
should we have it?



All meetings are subject to
public accommodations law.



Thinking about inclusivity:

Who can physically come into the building?

Who can access the necessary technology?

Who can access the agenda and materials being discussed?

Who can see the conversation?

Who can hear the conversation?

Who can add to the conversation?

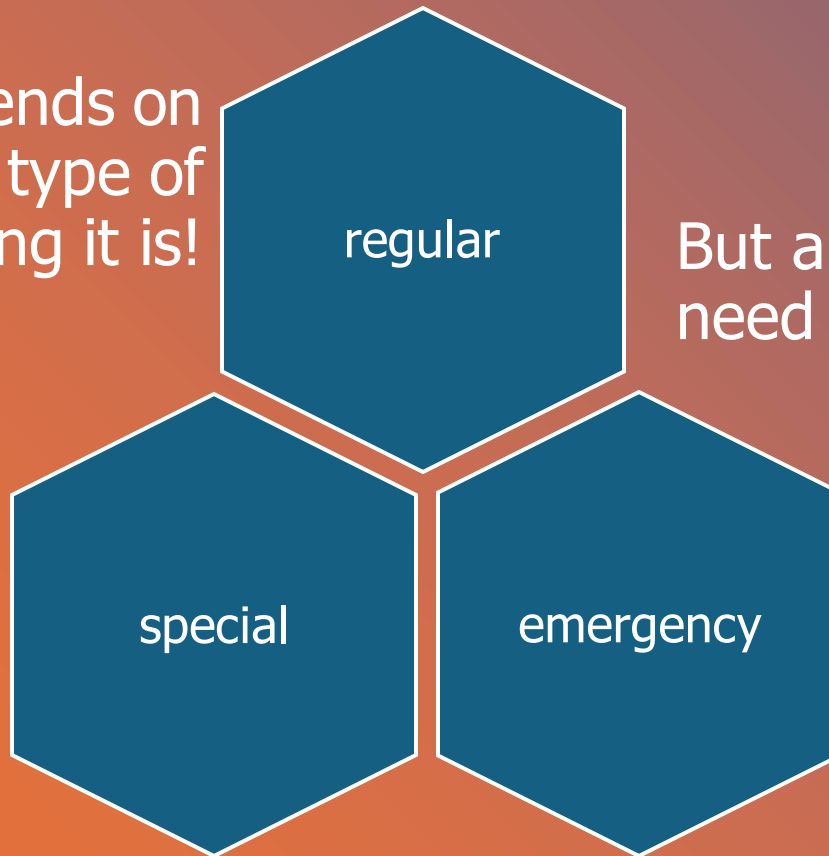
We recommend considering the OML's purpose as a guiding principle.

We recognize well-run hybrid meetings are the most inclusive format.

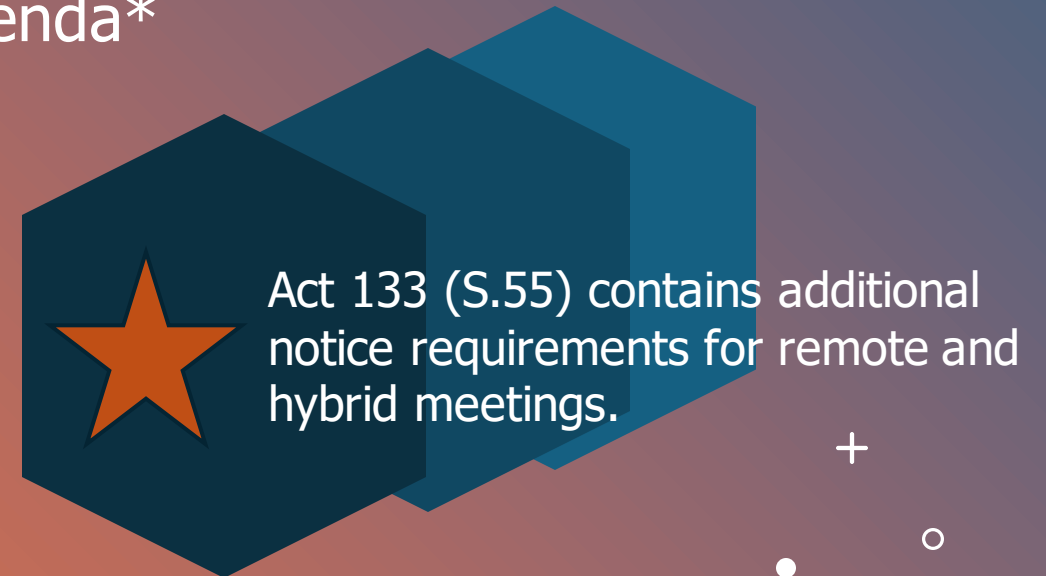


- What notice should the public have of a meeting?

It depends on
what type of
meeting it is!



But all meetings
need an agenda*



What notice should the public have of a REGULAR meeting?



Adopt a resolution setting time and place at your yearly organizational meeting. Post an agenda at least 48 hours before each meeting.



Post in the municipal clerk's office, in two designated public places, and on a website the public body maintains or designates.



Electronic posting substitutions expire with Act 1 on July 1, 2024.



Act 133 (S.55) contains additional notice requirements for remote and hybrid meetings.

What notice should the public have of a SPECIAL meeting?



Notice (time, place, purpose) and agenda should be posted 24 hours in advance.



Post in the municipal clerk's office, in two designated public places, and on a website the public body maintains or designates. Notify a newspaper or radio station, all members of the body, and any person who has requested notification.



Electronic posting substitutions expire with Act 1 on July 1, 2024.



Act 133 (S.55) contains additional notice requirements for remote and hybrid meetings.

What notice should the public have of an EMERGENCY meeting?

“Only when necessary to respond to unforeseen occurrence or condition requiring immediate attention.”



Give “some public notice...as soon as possible before the meeting.”



Where to post? Depends on the circumstances. (Focus on the OML’s underlying purpose.)



Act 133 (S.55) authorizes remote-only emergency meetings for *all* public bodies.

What should be on the agenda?

+
•
○

Specific topics of discussion

Potential actions of the body

If remote or hybrid, info that allows the public to directly access and participate in the meeting electronically

The location and time of the meeting

Act 133 (S.55) updates this requirement.



What needs to be in the minutes?

- +
 -
- “Give a true indication of the business of the meeting.”
- “Cover all topics and motions that arise.”
- Minimum content:
 - Members present.
 - Active participants.
 - Motions, proposals, resolutions, and their dispositions.
 - Vote results, noting individual votes if roll call.

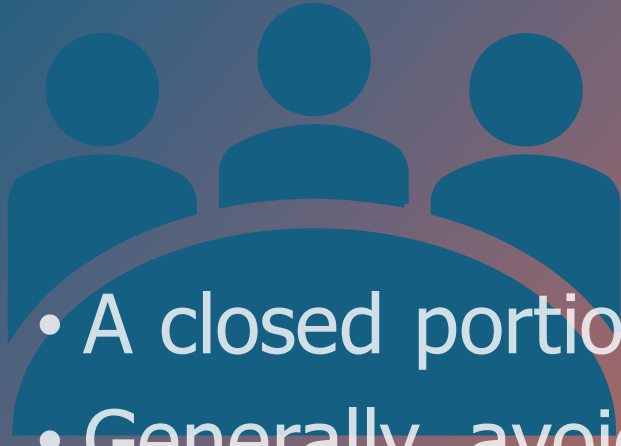


Where and how should the minutes be posted?

- Make available upon request no later than five calendar days after the meeting.
- Post to the website no later than five calendar days from the date of the meeting, if a public body maintains or designates a website.
- Must remain posted on the website for at least one year after the meeting. (Exception: draft minutes may be replaced with updated minutes.)



Act 133 (S.55) requires “nonadvisory” public bodies to electronically record each meeting and post the recording in a designated electronic location for 30 days after minutes have been posted.



What is an Executive Session?

- A closed portion of an open meeting.
- Generally, avoid use unless clearly necessary.
- Only appropriate if the discussion topic fits into one of 15 statutory categories:

After making a specific finding of clear and substantial disadvantage:

Contracts
Labor relations agreements with employees
Arbitration or mediation
Grievances (but not tax grievances)
Pending/probable litigation or prosecution to which body may be a party
Confidential attorney/client communications

No specific finding required:

Negotiating or securing real estate options
Appointment, employment, or evaluation of public officer or employee
Disciplinary or dismissal action against a public officer or employee
Clear and imminent peril to public safety
Records exempt from disclosure under the PRA
Academic records, suspension, or discipline of students
Testimony in Parole Board proceedings (if the disclosure could result in harm to the person testifying)
Pharmacy rebate agreements as protected by law
Security or emergency response measures (if the disclosure could jeopardize public safety)



How does a public body get into an Executive Session?

Only if the public body votes to enter from an open session and indicates its reason for doing so.

The motion must state the nature of the business of the executive session, be supported by a majority of the board, and be recorded in the minutes.

When preparing an agenda, consult with legal counsel if there is a question about whether an executive session is permissible or about which provision of executive session law applies.

What should happen in an Executive Session? + •



While in executive session, a public body may only discuss the subject matter referenced in the motion to enter executive session.

The public body decides who attends: legal counsel, staff, anyone who is the subject of discussion or whose information is needed.

Minutes are not required to be taken (and we recommend that you do NOT take them).

What should happen in an Executive Session?




+

A board cannot take any action in executive session except actions related to securing real estate options.

Ultimate action on all other items must be taken by motion and vote in open session. That motion should provide enough info (subject to confidentiality considerations) to allow the public to understand the nature and substance of the action taken.

Unless other law requires it, a public body may opt to conduct its business in public, even if an executive session is permissible.

What should be different if the meeting remote-only or hybrid?



**Beginning July 1, 2024,
Act 133 (S.55) changes for whom
and under what conditions
remote meetings are permissible.**

One or more members attend remotely:

- Introductions when meeting convenes.
- All must be able to hear and be heard throughout meeting.
- All votes not unanimous must be by roll call.


A quorum attends remotely:

- Agenda must designate a physical location for public participation. At least one board or staff member must be physically present.

Body opts to waive physical location under Act 1 of 2023, *permissible until July 1, 2024*:

- Must use technology that permits remote public participation.
- Whenever feasible, must allow public access by telephone.
- Must post info, and include info in the agenda, about how the public may access the meeting electronically.
- Legislative bodies must electronically record meetings, unless unusual circumstances make it impossible.

What should be different if the meeting remote-only or hybrid?



**Beginning July 1, 2024,
Act 133 (S.55) changes for whom
and under what conditions
remote meetings are permissible.**

The public body will need to consider:

- Options for electronic meeting software and/or conference calling.
- Adapting meeting procedure to account for remote-specific challenges, e.g. altered audio/visual cues and technological disruptions.
- New or different accessibility concerns.



Public Comment

The public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting. 1 V.S.A. § 312(h).

- So long as order is maintained.
- Subject to reasonable rules by the chair.



What is "reasonable?" It depends!
(Ask your attorney.)



Enforcement and Penalties for OML Violations



Act 133 (S.55) requires municipal website postings explaining OML citizen enforcement.



The aggrieved party must allege a specific violation of the OML and make a request for specific actions to cure it.

A public body has 10 calendar days to respond.

If acknowledge a violation, have 14 calendar days to cure it and take measures to prevent reoccurrence.

Failure to correct a violation could result in attorney's fees and other litigation costs.

Questions?

Act 133 (S.55) of 2024

nonadvisory body

“fully accessible”

request for access

+
•
○

“hybrid meeting”

audio- or video-recording

“local incident”

“advisory body”

“undue hardship”

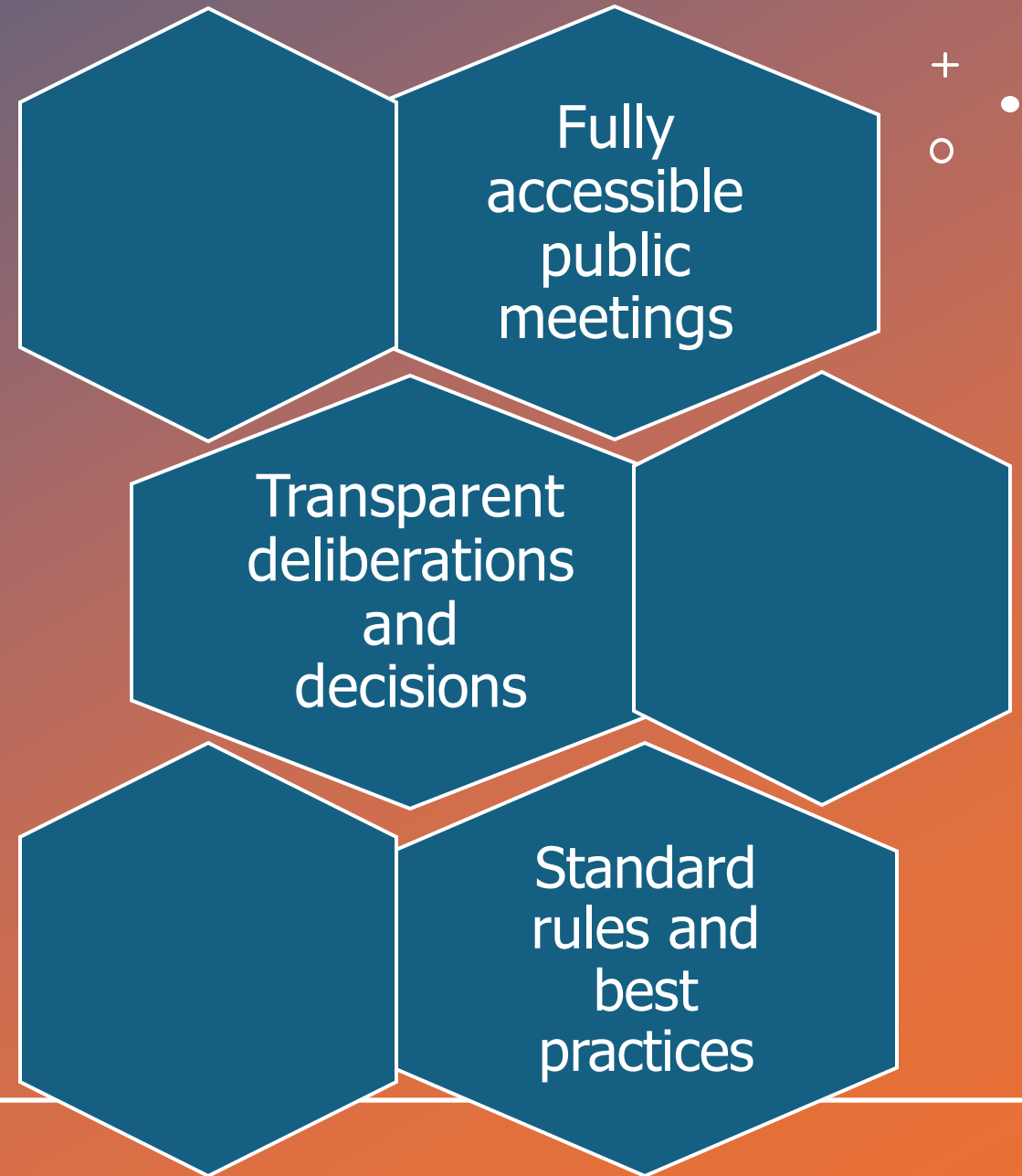
transparent

“State and local”

designated electronic platform

training

What does
Act 133
(S.55) aspire
to?



What does Act 133 (S.55) do?

Updates the longstanding OML in statute to address remote and hybrid meetings:

- Distinguishes among State and local “nonadvisory” and “advisory” public bodies.
- Authorizes remote-only meetings for advisory public bodies, subject to remote public participation requirements, and for all public bodies under specified emergency circumstances.
- Requires hybrid meetings for State nonadvisory bodies.
- Upon request, provides a limited right to local residents, the body's members, and the press for in-person or remote access to any regular meeting.

What⁺_o else does Act 133 (S.55) do?

- Requires State and local nonadvisory bodies to electronically record meetings and post the recordings online.
 - Includes similar requirements for certain informational meetings and hearings held in advance of a town's annual and special meetings of the voters.
- Requires each municipality to post on its website, if it maintains one, the procedures for filing an OML complaint under 1 V.S.A. § 314.
- Requires annual OML training for specified State and local officials.
- Establishes a workgroup to recommend ways to improve access to and participation in meetings of public bodies, meetings of the voters, and elections.


When does Act 133 (S.55) take effect?

JULY 1, 2024

Exceptions: January 1, 2025 effective dates for:


- Training requirements
- Hybrid mandate (and physical location requirement) for State nonadvisory bodies and communications union districts





What is an
“advisory
body”?

A public body that does not have supervision, control, or jurisdiction over legislative, quasi-judicial, tax or budgetary matters.



STATE NONADVISORY BODIES

MUST HYBRID regular & special meetings, with designated physical location and designated electronic platform...

...EXCEPT for emergency meetings (MAY REMOTE-ONLY) and during local incident/state of emergency (MAY REMOTE-ONLY, MAY IN-PERSON ONLY)

MUST AUDIO-VIDEO RECORD all meetings, and POST recording in designated location online for 30+ days after minutes approved/posted

STATE ADVISORY BODIES

MAY REMOTE-ONLY all meetings, subject to public participation requirements

LOCAL NONADVISORY BODIES

MUST DESIGNATE STAFFED PHYSICAL LOCATION for regular & special meetings

...EXCEPT for emergency meetings or during local incident/state of emergency (MAY REMOTE-ONLY)

MUST RECORD all meetings, EITHER audio or video, and POST in designated location online for 30+ days after minutes approved/posted...

...UNLESS "undue hardship"

LOCAL ADVISORY BODIES

MAY REMOTE-ONLY all meetings, subject to public participation requirements

+

•

○

Are we an ADVISORY public body?



We are ADVISORY, now what?



State and local advisory bodies are exempt from the OML's physical meeting location requirement. So, advisory bodies may continue to meet remote-only, without a designated staffed physical location, provided that they:

- Designate and use an electronic platform that allows the direct access, attendance, and participation of the public, including telephone access.
- Post info that enables the public to directly access the designated electronic platform and include this info in the agenda/public notice for the meeting.

We are ADVISORY, but...



Q: Are we allowed to meet in-person?

A: Yes! Remote-only meetings remain an option for advisory public bodies but are not required. If meeting in-person, the traditional OML requirements regarding a designated staffed physical location for public participation apply.

Q: May we continue to conduct hybrid meetings, or add a hybrid component going forward?

A: Yes! Well-run hybrid meetings are generally the most inclusive and are always permissible.

+
○

We are
NONADVISORY!
Now what?

If you are a
STATE public
body...

Beginning July 1, 2024:

- You must **electronically record** (audio and video) all meetings and **retain and post recordings** in a designated electronic location for 30+ days after approval/posting of minutes.
- If your meeting is **hybrid or remote-only**, you must:
 - Designate and use an electronic platform that allows the **public direct access, attendance, and participation**, including telephone access.
 - **Post** info that enables the public to directly access the electronic platform and include this info in the published agenda or public notice for the meeting.

Beginning January 1, 2025:

- **All regular and special meetings must be hybrid.** You must designate both a physical meeting location and an electronic meeting platform for every meeting.
- Emergency meetings, and meetings held during a local incident or state of emergency, may be remote-only.

+
○

We are
NONADVISORY!
Now what?

If you are a
LOCAL* public
body...

*Local means "of a municipality
or political subdivision."

Beginning July 1, 2024:

- You must provide a **designated, staffed physical location** for **all regular and special meetings**.
 - Emergency meetings, and meetings held during a local incident or state of emergency, may be remote-only.
- You must **electronically record** meetings, either video or audio-only, and **retain and post the recordings** in a designated electronic location for at least 30 days following the approval and posting of the minutes.
 - Exception: "Undue hardship"

If your meeting is **hybrid**, you should:

- Designate and use an electronic platform that allows the public direct access, attendance, and participation, including telephone access.
- Post info that enables the public to directly access the electronic platform and include this info in the published agenda or public notice for the meeting.

Electronic Recordings of Meetings

State and local nonadvisory bodies must, in addition to OML minutes requirements:

- Electronically record each meeting (unless “undue hardship,” for local bodies only).
 - State recordings must include video.
 - Local recordings may be video or audio-only.
- Post a copy of the recording in a designated electronic location for at least 30 days following the approval and posting of the minutes for that meeting.



Remember, recordings are PUBLIC RECORDS, and so must be retained pursuant to statute or an applicable records schedule approved by the State Archivist. Look for the updated records schedule in response to Act 133 (S.55) from our Vermont State Archives and Records Administration soon!

Wait! What is undue hardship?

“Undue hardship” means 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.

The undue hardship exception is available only to *municipal* public bodies, with regards to electronic recordings and requests for access.

The burden of proving undue hardship is on the municipality.



Requests for Access

To recap:

- State and local nonadvisory bodies may continue to meet remote-only, or may choose to hold in-person or hybrid meetings.
- State nonadvisory bodies must hold hybrid regular and special meetings.
- Local nonadvisory bodies must hold in-person regular and special meetings, or may choose to meet in hybrid fashion.

But what if a meeting is inaccessible to someone?





Requests for Access

WHO:

- A resident of the geographic area in which the public body has jurisdiction,
- a member of a public body, or
- a member the press.

WHAT: May request either a designated physical location or electronic/telephone access to a REGULAR meeting.

HOW: In writing. The requestor need not state why.

WHEN: Two or more business days before the meeting.





Requests for Access

THEN WHAT?

The public body SHALL grant the request,* unless:

- there is an all-hazards event or declared state of emergency,
- there is an “local incident,” or
- compliance would impose an undue hardship on the municipality.

* Requests only apply to the body’s next regularly scheduled meeting, not to a series of regular meetings, special or emergency meetings, or field visits.



Wait! What is a “local incident”?



First, let's talk about states of emergency:

○

During COVID-19, the Legislature adopted a series of temporary measures to authorize remote-only public meetings.

To avoid having to convene during a subsequent state of emergency to deal with public meeting concerns, the Legislature enacted 1 V.S.A. § 312a, which enshrined in statute some of the temporary COVID-response OML permissions (e.g. remote-only meetings, electronic posting of notices) to be triggered whenever the Governor declares a state of emergency.

Wait! What is a “local incident”?



Now, similarly, during a “local incident,” an affected public body may:

- Hold any public meeting as remote-only, without a designated staffed physical location.
- Meet exclusively at a designated physical meeting location, if the local incident impedes the body’s ability to hold a meeting electronically.
- For municipal public bodies, substitute one or two physical postings of a meeting agenda/notice with one or two electronic postings, respectively.

Wait! What is a “local incident”?

A weather event -- Loss of power or telecommunications services -- Public health emergency – Public safety threat – received threat that a member of the public 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,

I.e. interferes or obstructs in a manner that makes it infeasible for a public body to meet either at a designated physical location or through electronic means.

There's a local incident, now what?



Before the affected public body may meet⁺ using local incident authority, the highest ranking officer of the public body must make a formal written finding and announcement, including the basis for the finding.

As applicable, public bodies should “publicly announce” (as per special meetings) and post notice that that meeting location and/or platform has changed and explain where/how it will be held.

Remote-only meetings using local incident authority, like other remote-only meetings, must use technology that permits remote public participation, including telephone access, and must post info that enables direct access and participation in the agenda.

+

•

○

Notice of enforcement procedures and Trainings



Municipalities must post on their websites, if they maintain one:

An explanation of procedures for submitting notice of OML violation to the public body or Attorney General

A copy of the text of 1 V.S.A. § 314



The following officers must participate in an annual OML training by SOS, beginning 1/1/25:

State chairs of nonadvisory bodies

Local chairs of legislative bodies, town managers, & mayors



Remember...



Act 1 of 2023 expires July 1, 2024.

Act 133 (S.55) is effective July 1, 2024.

All other OML requirements in statute remain in effect!



What's next?

The Secretary of State will convene the Working Group on Participation and Accessibility of Municipal Public Meetings and Elections in summer 2024.

Among other tasks, the Working Group will recommend best practices for running effective and inclusive meetings that maximize participation and accessibility, and identify the technical assistance, equipment, and training needed by municipalities for effective and inclusive remote/hybrid meetings.



Look for VSARA's updated records schedule on electronic recordings in coming weeks, and the SOS OML online training to be made available by 1/1/25.



Questions?



Need help? Contact SOS

sos.vermont.gov/municipal-division/open-meetings/

Jenny Prosser
GC & Director of Municipal Assistance
802-828-1027
jenny.prosser@vermont.gov

sos.vermont.gov/vsara/manage/



VSARA Records Specialists
802-828-3700
sos.rim@vermont.gov

