

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

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.

- +
-
-

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?

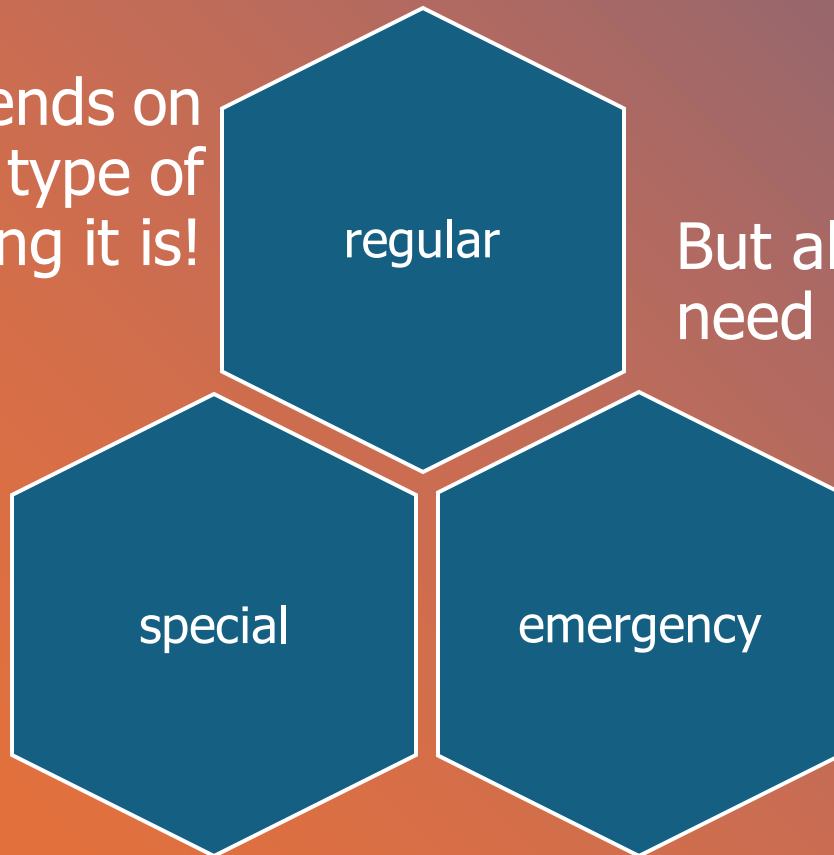
We recommend considering the OML's purpose as a guiding principle.

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

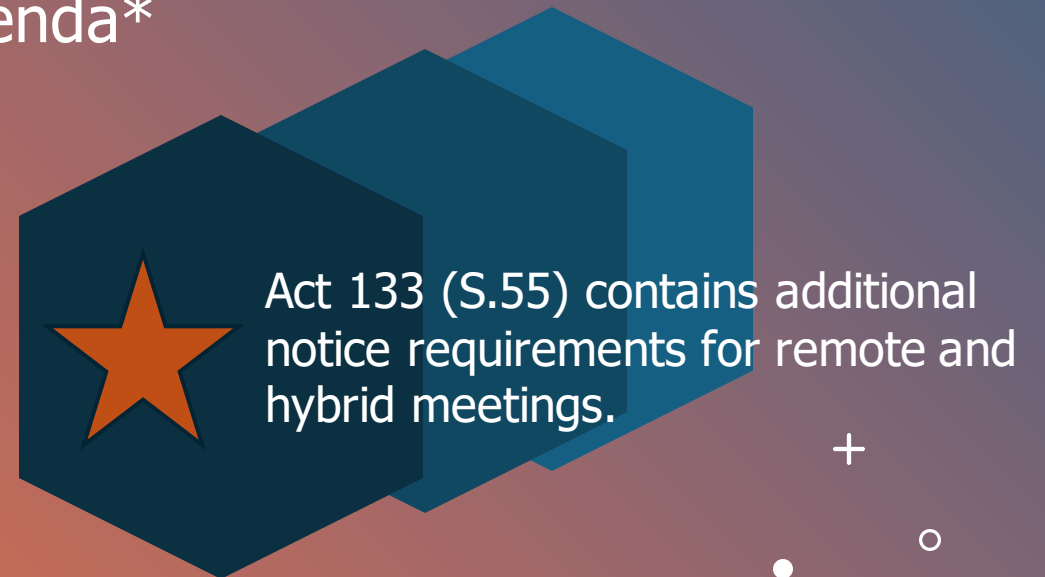
-
-

- + • 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 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.



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 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.



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.

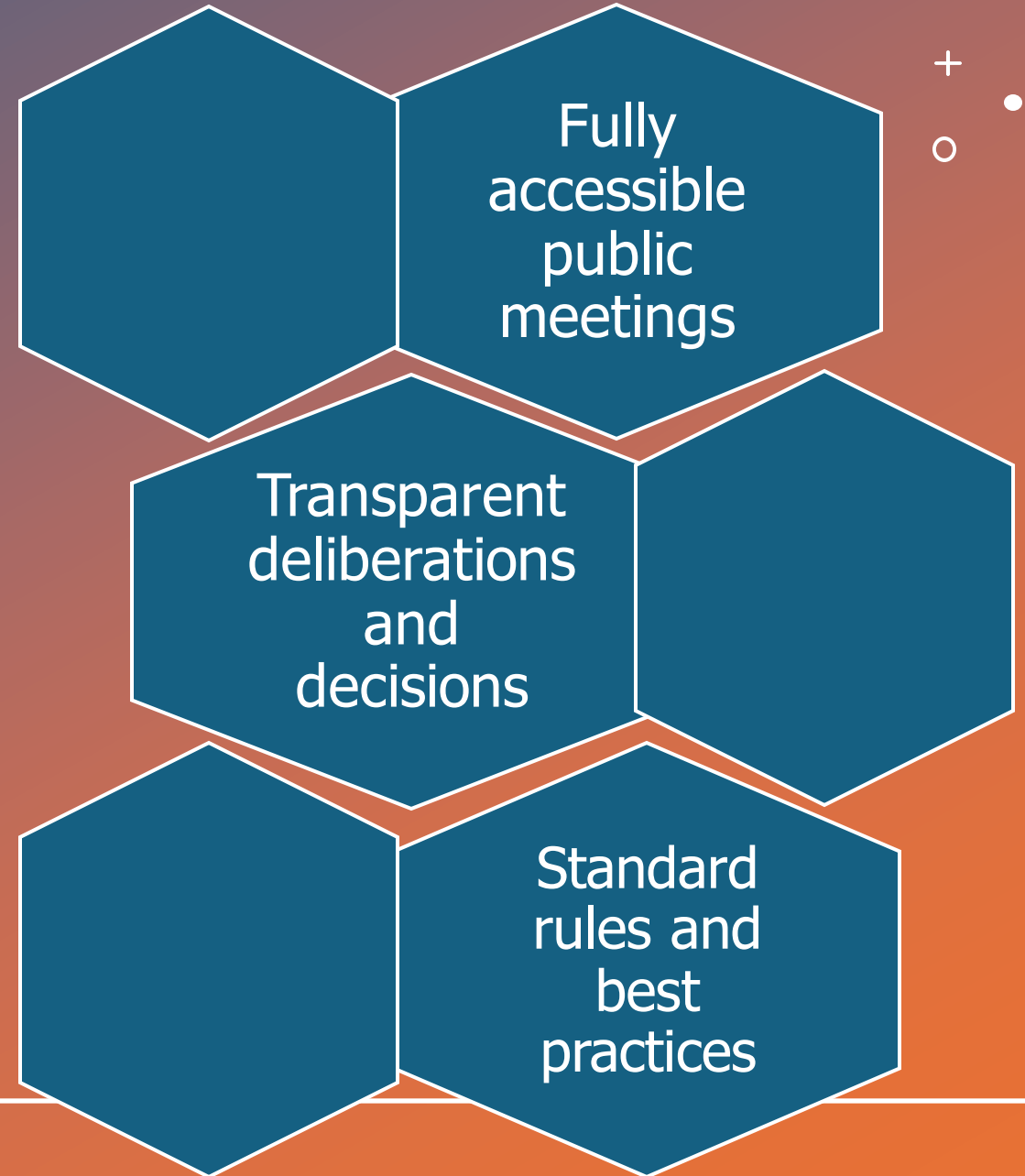


What is “reasonable?” It depends!
(Ask your attorney.)



Questions?

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⁺ else does Act 133 (S.55) do?

- Requires State and local nonadvisory bodies to electronically record meetings and post the recordings online.
- 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.



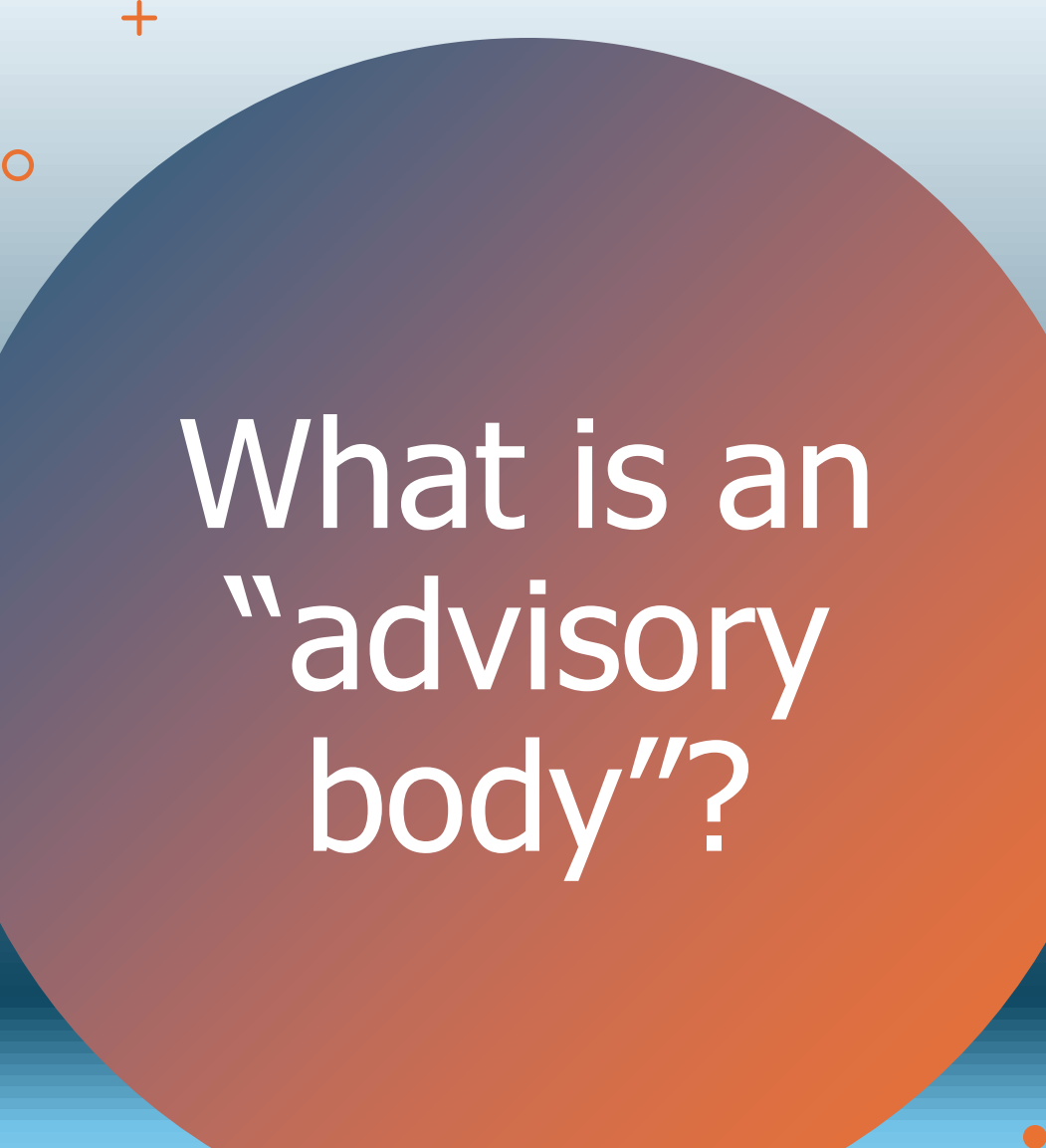
When does Act 133 (S.55) take effect?

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?

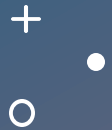


We are ADVISORY, now what?



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

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”?

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.

Wait! What is a “local incident”?



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.

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