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To: House Committee on Government Operations

From: Nicole Mace, Executive Director

Re: Proposed Changes to the Open Meeting Law & Public Records Act

Date: February 1, 2018

The VSBA provides legal information and support to school board members and superintendents around the state. A large portion of the calls and requests we receive are related to the open meeting law. Most boards do a good job of adhering to the law, but there is often confusion about application of those requirements, particularly given the rise of electronic communications.

Currently, our guidance to board members is that they should refrain from sending email communications to a quorum of the board members, regardless of whether there is a quorum of members present on a single communication thread. The same is true for phone calls, texts, or other forms of communication that may be used to hold “discussions” outside of an open meeting. We believe current law supports that interpretation.

Draft 1.4 of the committee bill is an improvement from earlier drafts that seemed to suggest that *any* one-on-one communications between school board members or board members and administrators (or board members and members of the public) would trigger the requirements of the open meeting law.

However, this draft still prohibits board members from having individual discussions with other members of the board (or employees or community members) on *any matter* concerning the business of the public body. For example, this would prohibit the chair of the board or the superintendent from having individual discussions with a quorum of board members who may have questions about a proposed budget or policy change.

School boards are asked to make incredibly important decisions impacting the future of their schools and communities. This bill would make it nearly impossible for school board members to discuss with constituents, employees,

and each other as individuals the repercussions of decisions they are being asked to make. Expecting that **all** discussion will occur at a formal meeting will, I believe, have the opposite effect of what this bill may hope to accomplish. Rather than ensuring more public participation, it may further dissuade elected officials from reaching out to employees and constituents to receive input and information about matters of importance to them.

Clearly it is not appropriate for consensus to be reached and decisions made outside of a warned meeting. But communicating with one another and with one's constituents is a necessary part of developing an informed position. The proposed change to the definition of a meeting places unnecessary restrictions on the free speech and association rights of individual school board members, will be totally unenforceable, and will discourage individuals from running for elected office in Vermont.

With respect to the changes to the public records act, we do not support a change to the statute that limits the ability to charge for staff time in the manner described on page 5, lines 8-10. This change, as I understand it, would prevent a school district from charging a fee for staff time spent searching for a public record. Some requests may require searching archives over multiple years for minutes, financial records, or other documents, which may consume a lot of staff time. Coupled with the requirement to respond to such a request "immediately, with little or no delay," (page 7, lines 3-5), this could lead to staff missing a substantial portion of a single work day to respond to a request.

Finally, with respect to the creation of the Ombudsman position, it seems inappropriate to have a single individual responsible for receiving, investigating, mediating, and adjudicating a dispute over the Open Meeting Law. There is currently a mechanism for individuals to allege violations of the open meeting law and an obligation on the part of the public body to respond. In our experience, if a violation has occurred it is usually the result of an oversight or misunderstanding, which is usually corrected by the public body under the current process. If the public body refuses to correct the situation or fails to respond at all, an individual has recourse through the courts, with penalties on the public body, including attorneys' fees for the opposing party, if the court determines the board acted in bad faith and/or violated the law. It is not clear to me how adding the Ombudsman to the process will lead to better compliance with the law.

