

1

H.615

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Introduced by Representatives Klein of East Montpelier, Ancel of Calais,

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Barnard of Richmond, Botzow of Pownal, Clarkson of

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Woodstock, Deen of Westminster, Dostis of Waterbury,

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Edwards of Brattleboro, Errecart of Shelburne, Evans of Essex,

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Kiss of Burlington, Kupersmith of S. Burlington, Maier of

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Middlebury, Marek of Newfane, Masland of Thetford,

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McCullough of Williston, Nuovo of Middlebury, Pellett of

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Chester, Pillsbury of Brattleboro, Reese of Pomfret and Shand

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of Weathersfield

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Referred to Committee on *Government Operations*

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Date:

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Subject: Public records; disclosure; deliberative process privilege

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Statement of purpose: This bill proposes to clarify that the common law

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deliberative process privilege is not an exemption to the state public records

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act and the right to inspect and copy records under that act. The bill also

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proposes that when an agency claims a record is exempt from inspection, the

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agency shall include a list of each record withheld and the specific exemption

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asserted. In addition, the bill would require the secretary of administration to

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report annually to the house and senate committees on government operations

1 the number of public records requests received each year by state agencies and
2 the agency time needed to respond to such requests.

3 AN ACT RELATING TO THE PUBLIC RECORDS ACT AND
4 APPLICATION OF THE DELIBERATIVE PROCESS PRIVILEGE

5 It is hereby enacted by the General Assembly of the State of Vermont:

6 *See P. 1a*
~~Sec. 1. 1 V.S.A. § 317(b) is amended to read:~~

7 (b) As used in this subchapter, "public record" or "public document" means
8 all papers, documents, machine readable materials, computer databases, or any
9 other written or recorded matters, regardless of their physical form or
10 characteristics, that are produced or acquired in the course of agency business.
11 Individual salaries and benefits of and salary schedules relating to elected or
12 appointed officials and employees of public agencies shall not be exempt from
13 public inspection and copying. The common law deliberative process privilege
14 is not recognized in Vermont, and inter-agency and intra-agency advisory,
15 consultative, or deliberative material shall not be exempt from public
16 inspection and copying unless otherwise exempt under subsection (c) of this
17 section.

~~Sec. 1. 1 V.S.A. § 317(c) is amended to read:~~

~~(c) The following public records are exempt from public inspection and copying:~~

~~***~~

~~(4) records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege other than the common law deliberative process privilege as it applies to the executive branch agencies of the state of Vermont;~~

Sec. 1. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

(4) records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege other than the common law deliberative process privilege as it applies to the general assembly and the executive branch agencies of the state of Vermont;

Sec. 2. 1 V.S.A. § 318(a)(2) is amended to read:

(2) if the custodian considers the record to be exempt from inspection under the provisions of this subchapter, ~~he the custodian~~ shall so certify in writing ~~stating his reasons for denial of access to the record.~~ Such certification shall identify the records withheld and the basis for the denial. The certification shall be made within two business days, unless otherwise provided in subdivision (5) of this subsection. The custodian shall also notify the person of his right to appeal to the head of the agency any adverse determination;

Sec. 3. SECRETARY OF ADMINISTRATION REPORT

The secretary of administration shall submit an annual report to the house and senate committees on government operations on January 15. The report shall include a list of the written public records requests received for the prior calendar year for each state agency; the number of records delivered or withheld by each state agency; the number of records that could not be located by each state agency; and the agency time needed to respond to each request.

Sec. 4. LEGISLATIVE COUNCIL STUDY

The legislative council, in consultation with the state archivist, the public records specialists in the department of buildings and general services, the agency of administration, the division of vital records in the department of health, the Vermont league of cities and towns, the Vermont municipal clerks and treasurers association, and other interested parties, shall study the public records law of the state of Vermont as set forth in chapter 5 of Title 1, 3 V.S.A. § 218, and the numerous exemptions to the public records requirements throughout the Vermont statutes. On or before January 15, 2007, the legislative council shall report to the house and senate committees on government operations. The report shall include:

(1) A summary of the statutory requirements and organization of the state public records requirements;

(2) An analysis of the ease of access and use of public records under the existing state public records requirements and any recommendations to improve use of and access to public records;

(3) An analysis of the need and justification for each of the existing exemptions in statute to the inspection and review requirements of the public records act;

(4) A review of the management and administration of public records requirements by the department of buildings and general services, other state agencies, and municipalities;

(5) A summary of the pending federal regulations for the administration, issuance, and inspection of vital records and a review of how such regulations will impact Vermont public records management and inspection;

(6) A summary of the enforcement of public records requirements in the state, including the ability of an aggrieved person to appeal a decision of a public agency, and a summary of public records enforcement and appellate authority in other states; and

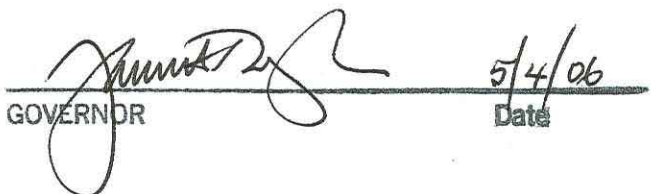
(7) Proposed legislation to amend, reorganize, and simplify the public records requirements of the state of Vermont.

ATTESTED TO:


Donald G. Milne
Clerk, House of Representatives


GAYE R. STYINGTON
SPEAKER OF THE HOUSE OF REPRESENTATIVES


BRIAN E. DUBIE
PRESIDENT OF THE SENATE


GOVERNOR

5/4/06
Date

1 ~~Sec. 2. 1 V.S.A. § 317(c)(4) is amended to read:~~

2 (4) except as set forth in subsection (b) of this section, records which, if
3 made public pursuant to this subchapter, would cause the custodian to violate
4 any statutory or common law privilege;

5 Sec. 3. 1 V.S.A. § 318(a)(2) is amended to read:

6 (2) if the custodian considers the record to be exempt from inspection
7 under the provisions of this subchapter, ~~he~~ the custodian shall so certify in
8 writing ~~stating his reasons for denial of access to the record.~~ Such certification
9 shall identify each record withheld and the specific exemption asserted. The
10 certification shall be made within two business days, unless otherwise provided
11 in subdivision (5) of this subsection. The custodian shall also notify the person
12 of his right to the head of the agency any adverse determination;

13 Sec. 4. SECRETARY OF ADMINISTRATION REPORT

14 The secretary of administration shall submit an annual report to the house
15 and senate committees on government operations on January 15. The report
16 shall include the number of public records requests received each year by state
17 agencies and the agency time needed to respond to such requests.

ORIGINAL

H.615

AN ACT RELATING TO THE PUBLIC
RECORDS ACT AND
APPLICATION OF THE
DELIBERATIVE PROCESS
PRIVILEGE.

Masland of Thetford, McCullough of
Williston, Nuovo of Middlebury, Pellett of
Chester, Pillsbury of Brattleboro, Reese of
Pomfret and Shand of Weathersfield.

Read the first time and referred to
Committee on Gov. Ops.

Donald Miller Clerk

PROOFREAD

House Passage

Final Passage

HOUSE OF REPRESENTATIVES
2/16, 20 06
ENTERED ON THE CALENDAR
FOR NOTICE.

Wm. M. Magill
ASST. CLERK

HOUSE OF REPRESENTATIVES

January 16, 2006

Introduced by Representatives Klein of East
Montpelier, Ancel of Calais, Barnard of
Richmond, Betzow of Pownal, Clarkson of
Woodstock, Deen of Westminster, Dostis of
Waterbury, Edwards of Brattleboro,
Errecart of Shelburne, Evans of Essex, Kiss
of Burlington, Kupersmith of S. Burlington,
Maier of Middlebury, Marek of Newfane,

HOUSE OF REPRESENTATIVES

2/17, 2006

RPT. FAV. W/REC. OF

AMEND. BY C. ON Gov. Ops.

~~RPT. FAV. W/REC. OF~~

~~AMEND. BY C. ON~~

~~RD. 2ND T., REC. OF~~

~~AMEND. OF C. ON Gov. Ops.~~

~~AGREED TO, REC. OF~~

~~C. ON~~ ~~AGREED TO~~

~~AND 3RD RDG. ORDERED~~

Wm. M. Magill
ASST. CLERK

PENDING THE QUESTION, Shall
the bill be amended as
recommended by Gov. Ops.?

REP Flory OF Pittsford

MOVED THAT THE BILL BE

COMMITTED TO THE COMM. ON

Judiciary

~~AGREED TO ON A DIVISION.~~

~~YES~~ ~~NO~~

PENDING THE QUESTION

Committed to Judiciary?

REP Partridge OF Windsor

DEMANDED THE YEAS AND NAYS,

WHICH DEMAND WAS SUSTAINED

BY THE CONST. NUMBER

THEREUPON THE CLERK

PROCEEDED TO CALL THE ROLL

AND THE Q. WAS DECIDED IN THE

Negative YES 48 NO 83

Wm. M. Magill

Thereupon, the Pending Question
Shall the bill be amended as
recommended by the Committee
on Government Operations?

PENDING THE QUESTION Bill
be amended as recommended
by Gov. Ops.?

REP Flory OF Pittsford

DEMANDED THE YEAS AND NAYS,

WHICH DEMAND WAS SUSTAINED

BY THE CONST. NUMBER

THEREUPON THE CLERK

PROCEEDED TO CALL THE ROLL

AND THE Q. WAS DECIDED IN THE

Affirmative YES 82 NO 49

Thereupon Third Reading
was ordered.

Wm. M. Magill

HOUSE OF REPRESENTATIVES

2/21, 20 06

TAKEN UP AND PENDING 3RD

READING OF THE BILL,

REP Flory OF Pittsford

MOVED THAT THE BILL BE

AMENDED ~~W/RECOMMENDATION~~

~~TO BE COMMITTED TO THE~~

~~COMMITTEE ON JUDICIARY~~

~~AND THE BILL BE~~

~~READ THE THIRD TIME.~~

Wm. M. Magill

ASST. CLERK

Thereupon Rep. Bohi of
Hartford moved to substitute
an amendment for the amendment
offered by Rep. Flory of Pittsford
which was agreed to.

Wm. M. Magill

Thereupon the Amendment offered by
Rep. Bohi of Hartford was agreed to
and the bill was read a Third time
and passed.

Wm. M. Magill

SENATE CHAMBER

2/23, 20 06

Read and referred to Committee

on Gov. Ops.

Wm. M. Magill

Assistant Secretary

SENATE CHAMBER

4/13, 2006

Entered on the Calendar for Notice.

Assistant Secretary

HOUSE OF REPRESENTATIVES

4/21, 2006

SENATE PROPOSAL OF AMENDMENT
CONSIDERED AND CONCURRED IN

ASST. CLERK

SENATE CHAMBER

4/18, 2006

Reported favorably with ~~recommendations~~
proposals of amendment. Read second time,
~~recommendations~~/proposals of amendment
agreed to and third reading ~~passed~~.

Assistant Secretary

SENATE CHAMBER

4/19, 2006

Read third time and passed in
concurrence with proposals of
amendment.

Assistant Secretary

SENATE CHAMBER

4/19, 2006

On motion of Sen. Marza rules
were suspended and bill was ordered
messaged to House forthwith

Assistant Secretary

HOUSE OF REPRESENTATIVES

4/20, 2006

ENTERED ON THE CALENDAR
FOR NOTICE.

ASST. CLERK