

From: Allen, Susan
Sent: Friday, May 23, 2014 11:49 AM
To: Miller, Elizabeth; London, Sarah
Subject: FW: VPA Update on Open Meeting as requested

FYI only.

From: Donoghue, Mike [mailto:MDONOGHU@burlingt.gannett.com]
Sent: Friday, May 23, 2014 11:24 AM
To: Allen, Susan; London, Sarah
Cc: John Flowers
Subject: VPA Update on Open Meeting as requested

Dear Sue,

Great chatting with you yesterday.

As requested, here are some follow up thoughts and analysis about the legal fees proposed in the open meeting legislation that we hope will be vetoed.

The bottom line is nobody will be able to meet the special standards established by the legislature to win legal fees as outlined on both pages 12 and 14 of the bill. (No wonder government lobbyists supported the wording, along with the unprecedented "do over" provision.)

Even if by some odd chance a case did reach the question of legal fees, it would still be discretionary for the judge. Officials can always use the claim they acted in "good faith" and law allows them to dodge the legal fees.

(As the Governor knows discretionary legal fees never worked for public records. That is why he implemented mandatory legal fees in his public records law. The Vermont legislation is working perfectly and is a national model.)

The Vermont Press Association had not focused on the possible legal fees because we did not believe it would ever be used. We were highlighting about a dozen major flaws in the legislation that would be reason to veto the bill because of the lack of transparency.

Now that we know the legal fees is seen by a few as the one positive in the bill, we did further examination of the wording as your office requested and find other flaws. Among the problems:

-- There is no limit on "do overs."

A board can avoid legal fees by correcting the situation anytime IF (and that is a big word) they are caught. A board that repeatedly fails to provide minutes after five days (the standard since the original law was implemented in the 1970s) can take 21 to 24 days to correct the situation. Boards that meet twice a month can fail to post minutes each time after 5 days and take advantage throughout the year of the "do over" each time. The board will never have to pay legal fees.

-- The first step in getting legal fees -- the process for invoking the "do over" -- is unclear.

The proposed law says written notice is required. The law does not say if every board member has to be notified, just one member, or if it must go to the chair of the board. Also are town clerks, town managers, school superintendents able to accept service of the notice on behalf of the board they serve? What if the board member is on vacation or refuses to open the letter or e-mail.

-- There is -- for some unknown reason -- a one-year statute of limitations on correcting an open meeting violation.

Most times open meeting violations are not uncovered until long after because of the code of silence by board members. What happens if the one year statute of limitations expires during the 21-to-24 day "do over" period?

-- It sanctions deception. If a board wants to avoid public oversight of a particular issue before it acts, this bill allows the body to act upon it without warning. Under this bill, it could be added to the agenda as the first order of business and acted upon the same day. We see this as a fatal flaw and no chance to recover

legal fees or any
penalty.

These are just a few problem uncovered since our chat yesterday.
A more detailed
study would find more.

The VPA believes the governor could highlight the issue of the
importance of open
meetings and transparency with a veto. Signing a bill with a
dozen flaws and one very
questionable positive aspect is not the way to go.

This is one of the few pieces of legislation that the 60-plus
newspapers are all in in
agreement. Our newspapers live under the open meeting law
everyday and know the
serious problems with it.

Nothing is fixed with this bill.

I will be available much of today if you have any questions.
Might be tied up between
11:30 a.m. and 12:15 p.m.

Thanks

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