



Testimony by Allen Gilbert, ACLU-VT, S. 67

While S. 67 is not as expansive as the public records bill, it does make significant changes that advance open government.

The important changes are these:

- **For the first time since the open meeting law was created in the 1970s, a prevailing plaintiff's right to recover attorney fees and costs in open meeting litigation has been added.** Reimbursement "shall" be provided unless "(1) The public body had a reasonable basis in fact and law for its position; and (2) The public body acted in good faith." This provision will provide an enforcement mechanism the law has lacked.
- **The bill gives a public body the chance to "cure" a violation of the open meeting law after having been given notice of an alleged violation.** A "cure" means the public body corrects mistakes/violations after the fact -- disclosing what was discussed in an executive session, for example. A "cure" relieves the public body of facing penalties or of having to pay attorney fees and costs if litigation is pursued.
- **The section of the law describing the use of executive sessions has been rearranged** to make the provisions clearer and easier to understand.
- **Meeting notice requirements are clarified,** and conditions around "electronic" meetings are set.

The bill does have some shortcomings:

- **The awarding of fees and costs to prevailing plaintiffs is effectively discretionary despite the mandatory "shall" language.** And the two "unless" conditions will likely result in plaintiffs having to convince the judge that the public body knew it WASN'T doing the right thing and DID NOT act in good faith. That is because public bodies will likely be presumed to have acted reasonably and in good faith unless evidence to the contrary is brought before the judge.
- **It's unclear whether the option to "cure" an open meeting violation is a viable one that will, in the long run, increase compliance with the law.** Evidence of the cure provision's effectiveness may be, first, widespread use when the option becomes available but, second, diminished use as public bodies become more familiar with and abide by the provisions of the open meeting law.

Despite these shortcomings, the ACLU supports S. 67 as a significant improvement over current law.