

Ask The League

How Many Votes are Needed to Enter Executive Session?

A majority of the members of the public body “present.”

Executive session is a limited statutory exception to Vermont’s Open Meeting Law. A selectboard may vote to enter into an executive session at any time during an open meeting when the topic to be discussed meets the criteria in 1 V.S.A. § 313(a). The motion must state the nature of the business to be discussed in executive session and the result of the vote must be entered into the minutes. No other matter may be discussed in the session until the board comes out of the session and is again in open meeting. Minutes of an executive session are not required.

Ordinarily, a municipal public body cannot take action unless a majority (one more than half) of the entire membership of its body (e.g., a quorum) agrees. The controlling statute reads, “(w)hen joint authority is given to three or more, the concurrence of a majority of such number shall be sufficient and shall be required in its exercise.” 1 V.S.A. § 172. For example, if a selectboard has five members, three are needed to hold a meeting [“a gathering of a quorum of the members of the public body...” 1 V.S.A. § 310(2)] and all three must agree in order to take any action. Voting to enter executive session represents a special exception to this rule. “No public body described in section 312 of this title may hold an executive session from which the public is excluded, except by affirmative vote ... of a majority of its members *present* in the case of any public body of a municipality or other political subdivision.” [Emphasis added.] 1 V.S.A. § 313(a). Contrast 1 V.S.A. § 172, which necessitates the vote of “a majority of such number” to take action, with 1 V.S.A. § 313(a), which requires only the vote of “a majority of its members present” to enter executive session. The addition of the word “present” lowers the threshold for action. Sticking with our five-member selectboard, while three would still be needed to constitute a meeting, only two of those three members would be needed to vote in the affirmative for the board to enter executive session.

Why the relaxed standard for entering into executive session? Reviewing the nine reasons for entering executive session reveals that all share one common attribute – the exercise of a little discretion on behalf of the board: contracts, labor relation agreements, etc. where premature public knowledge could place the municipality or person involved at a substantial disadvantage; a disciplinary or dismissal action against a public officer or employee; academic records or suspension or discipline of students; testimony in a parole proceeding; information protected from disclosure, etc. Recall as well that “no formal or binding action shall be taken in executive session except actions relating to the securing of real estate options ...” so all a board will be able to do is simply talk about these issues. It will still have to come out of executive session to take formal or binding action, which itself will still demand the concurrence of a majority of the total membership of the board.

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