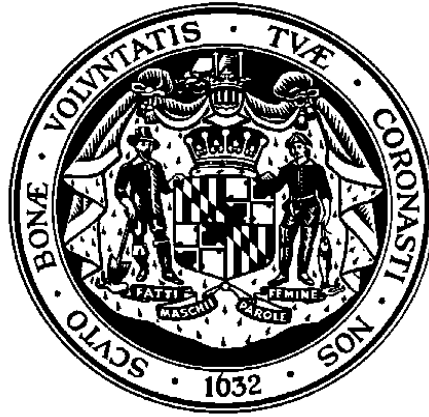




OPEN MEETINGS ACT MANUAL

OFFICE OF THE

MARYLAND ATTORNEY GENERAL

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TABLE OF CONTENTS

Preface	iii
Chapter 1: Policy and Interpretive Principles	1
Chapter 2: Scope of Open Meetings Act	3
A. “Public Bodies”	3
B. “Meetings”	6
C. Subject Matter: Functions Included and Excluded	12
D. Written Material	15
Chapter 3: Procedural Requirements	17
A. Notice	17
B. Choice of Meeting Site	18
C. Voting Requirements	19
D. Minutes	20
Chapter 4: Open and Closed Meetings	24
A. General Openness Requirement	24
B. Observing and Taping	25
C. Exceptions Allowing Closed Meetings	26
Chapter 5: Enforcement	30
A. Open Meetings Compliance Board	30
B. Judicial Enforcement	31
C. Civil Penalty	32
Appendix A: Text of Open Meetings Act	A-1
Appendix B: Compliance Checklist	B-1
Appendix C: Form of Statement for Closing a Meeting	C-1
Appendix D: Model Rules	D-1

Appendix E: Compliance Board Opinions) Topical Index	E-1
Appendix F: Compliance Board Opinions) Citator	F-1
Appendix G: Legislative Chronology	G-1

PREFACE

When the bill that later evolved into Maryland's 1977 "Sunshine Law" was endorsed by the House and Senate committees, they wrote of the need to find the "proper balance between ... two imperatives": "securing the public's right to know public business," and yet preserving the "confidentiality [that] is indispensable to the efficient, effective and fair conduct of government." The 1977 Open Meetings Act tried to find that necessary balance. It represented a major advance over prior law, which essentially left the matter up to the agencies and therefore encouraged closed-door government. Then, in 1991, the Legislature returned to the issue and shifted the balance more clearly in favor of the public's right to know.

This manual, now in its fourth edition, is meant to help members of public bodies, their lawyers, and members of the press and public understand the Act and especially its practical application. It may be freely copied. This new edition reflects the substantial body of guidance provided by the opinions of the Open Meetings Compliance Board, which are available on the Attorney General's website (www.oag.state.md.us; click on "Opinions") and in printed form (ordering information on the website).

I am grateful to Jack Schwartz, who has served as counsel to the Open Meetings Compliance Board since its inception, for preparing this new edition. I also want to thank the members of the Open Meetings Compliance Board) Chairman Walter Sondheim, Courtney McKeldin, and Tyler Webb) for their support for this project. They have played a vital role in making the promise of this new law a reality.

J. Joseph Curran, Jr.
September 2000

CHAPTER 1

POLICY AND INTERPRETIVE PRINCIPLES

The Maryland Open Meetings Act is based on the General Assembly’s policy determination in favor of open decision-making by governmental bodies:

It is essential to the maintenance of a democratic society that, except in special and appropriate circumstances:

(1) public business be performed in an open and public manner; and

(2) citizens be allowed to observe:

(i) the performance of public officials; and

(ii) the deliberations and decisions that the making of public policy involves.

§10-501(a) of the State Government Article.¹ The General Assembly came to this policy judgment because public and news media access to the meetings of public bodies “ensures the accountability of government to the citizens of this State.” §10-501(b)(1). Furthermore, “[t]he conduct of public business in open meetings increases the faith of the public in government and enhances the effectiveness of the public in fulfilling its role in a democratic society.” §10-501(b)(2).²

¹ The Open Meetings Act is codified as Subtitle 5 of Title 10 of the State Government Article, Maryland Code. All statutory references in this manual are to this subtitle, unless otherwise indicated.

² Nearly every state has made the same policy judgment. For a comprehensive review of state “sunshine” laws, see Ann Taylor Schwing, *Open Meeting Laws* (1994), and Peter G. Guthrie, Annotation, *Validity, Construction, and Application of Statutes Making Public Proceedings Open to the Public*, 38 A.L.R. 3d 1070 (1971).

Thus, the general rule is that if a public body is meeting on the subject matter covered by the Open Meetings Act (matters that are discussed in the next chapter of this manual), the body must meet in open session. §10-505. While the Act sets out exceptions to this general rule, the exceptions themselves are to be “strictly construed in favor of open meetings of public bodies.” §10-508(c).

The General Assembly has recognized that a local government might be subject to its own “sunshine” law. In the event of a conflict between the Open Meetings Act and another law on the same subject, the Open Meetings Act applies “unless the other law is more stringent.” §10-504. So, for example, if a municipal charter requires *all* meetings of a town council to be open, the council may not invoke an exception in the Open Meetings Act to close a meeting.³

St. Mary’s County has its own separate Open Meetings Act, codified in Article 24, Title 4, Subtitle 2 of the Maryland Code. Although the St. Mary’s County Act in general is the more stringent of the two laws, a public body of the St. Mary’s County government should comply with a provision of the State Open Meetings Act if the latter leads to greater public access.⁴

³ See *City of College Park v. Cotter*, 309 Md. 573, 525 A.2d 1059 (1987).

⁴ The relationship between the two laws is the subject of an advice letter from Assistant Attorney General Robert A. Zarnoch and Staff Attorney Kurt Wolfgang to Delegate J. Ernest Bell, II (November 22, 1991).

CHAPTER 2

SCOPE OF OPEN MEETINGS ACT

A. “Public Bodies”

The Open Meetings Act applies only to entities that consist of at least two people. §10-502(h)(1)(i). Thus, the Act is inapplicable to a meeting held by the chief executive of a jurisdiction, a department head, or another official acting as “a single member entity.” §10-502(h)(3)(i).¹ If a statute requires a single official to hold a public hearing, for example, the Open Meetings Act does not govern notice or other requirements concerning the hearing; the other statute would.

From the initial passage of the Act, it has applied to multi-member bodies created by the following formal legal instruments: the Maryland Constitution; a State statute; a county charter; an ordinance; a rule, resolution, or bylaw; an executive order of the Governor; or an executive order of the chief executive of a political subdivision. §10-502(h)(1)(ii). Therefore, the first and often determinative step in analyzing whether the Act applies to an entity is to review the basis for the entity’s existence. For example, the “public body” status of a county delegation to the General Assembly depends on the formal legal authority for its existence, namely the pertinent rule of the House of Delegates or the Senate.²

Sometimes a subgroup of a public body is itself a public body, separately subject to the Open Meetings Act when it meets. In one case, for example, the Court of Appeals held that a group of members of a school board, numbering less than a quorum of the board, itself constituted a “public body” when authorized by statute and board resolution to negotiate a labor agreement.³ Conversely, if the authority for the

¹ See Compliance Board Opinion 96-8 (September 3, 1996), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 175.

² 80 *Opinions of the Attorney General* ____ (1995) [Opinion No. 95-052, at 5 n.8 (November 21, 1995)]; letter of advice from Assistant Attorney General Richard E. Israel to Senator Timothy R. Ferguson (August 1, 2000).

³ *Carroll County Educ. Ass’n v. Board of Educ.*, 294 Md. 144, 155, 448 A.2d 345 (1982). See also *Avara v. Baltimore News American*, 292 Md. 543, 550-51, 440 A.2d 368 (continued...)

existence or the functions of a subgroup of a public body is not set out in a statute, bylaw, resolution, or other formal instrument identified in §10-501(h)(1)(ii), the subgroup itself would not be a “public body.” Thus, the Compliance Board ruled, “A subcommittee that is simply designated by the presiding official ... is not a public body.”⁴

Except as discussed below, the Act does not apply to bodies that exist simply as a result of long-standing practice, informal arrangements, or other means apart from any of these formal legal instruments. For example, the Court of Special Appeals held that the Act does not apply to a political gathering or party caucus.⁵ Similarly, a group of employees, not chosen by a public official nor created by constitution, statute, ordinance, rule, or executive order, is not a “public body”; therefore, the group is not required to meet in open session.⁶

One portion of the definition of “public body” extends the term) and accordingly, the Act itself) to certain entities created less formally. That is, the Act applies to “any multi-member board, commission, or committee appointed by the Governor or the chief executive authority of a political subdivision of the State, if the entity includes in its membership at least 2 individuals not employed by the State or a political subdivision of the State.” §10-502(h)(2)(i). For example, if the Governor uses a letter instead of an executive order to designate a group of people, including at least two private citizens, to study a matter of public concern, the entity will be covered by the Act.

Some officials have expressed concern that this aspect of the definition of “public body” would extend the Act to informal citizen groups) for example, if the

³ (...continued)
(1982) (legislative conference committee “authorized” by rule is a “public body”).

⁴ Compliance Board Opinion 99-12 (August 26, 1999), *reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 70, 72. *See also* Compliance Board Opinion 94-4 (July 18, 1994), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 69.

⁵ *See Ajamian v. Montgomery County*, 99 Md. App. 665, 639 A.2d 157, *cert. denied*, 334 Md. 631, 640 A.2d 1132 (1994).

⁶ 80 *Opinions of the Attorney General* ____ (1995) [Opinion No. 95-030 (August 4, 1995)].

mayor of a town appoints a committee of citizens to make recommendations about the siting of bus stops. The definition is indeed broad, and such a committee, if appointed by the chief executive, would be a “public body.” And if, as in this example, the committee is carrying out an “advisory function,” the Act would apply.

This expanded definition of “public body” does not apply to entities appointed by anyone other than the Governor or chief executive of a political subdivision. Thus, if the head of a department of State or local government or a school superintendent appoints an advisory group, the group’s status as a “public body” depends on the application of the original definition in §10-502(h)(1)) that is, whether the authority for the group’s existence is set forth in a statute, bylaw, resolution, or similar formal instrument. In this instance, because the appointing official is not “the Governor or the chief executive authority of a political subdivision,” the expanded definition in §10-502(h)(2) would be irrelevant.

In an era of privatization and entrepreneurial government, the status of private corporations can be controversial. In general, private corporate boards are not “public bodies.” Moreover, the receipt of public funds does not itself subject a private corporation to the Open Meetings Act.⁷ Under a test adopted by the Court of Special Appeals, however, the origin and functions of some nominally private corporations would cause them to be considered “public bodies”:

A private corporate form alone does not insure that the entity functions as a private corporation. When a private corporation is organized under government control and operated to carry on public business, it is acting, at least, in a quasi-governmental way. When it does, in light of the stated purposes of the statute, it is unreasonable to conclude that such an entity can use the private corporate form as a parasol to avoid the statutorily-imposed sunshine of the Open Meetings Act.⁸

⁷ Compliance Board Opinion 97-3 (April 16, 1977), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 212, 216 n. 4. See also Opinion of the Attorney General 96-011 (February 29, 1996) (unpublished).

⁸ *Andy’s Ice Cream v. City of Salisbury*, 125 Md. App. 125, 154-55, 724 A.2d 717, (continued...)

According to the Court of Special Appeals, a private corporation that “was organized and has functioned as an extension or sub-agency of the ... government” is a “public body” under the Act.⁹ Moreover, the Compliance Board has opined that if a corporation’s existence is authorized by a direct legislative act, and the legislative body intended the corporation to be governmental in character, the corporate board is a “public body.”¹⁰

The Act lists entities that are excluded from the definition of “public body” and therefore are excluded from the Act’s coverage. Among these specific exclusions are judicial nominating commissions, grand juries, petit juries, courts (except when they are engaged in rulemaking), the Governor’s Cabinet, and a local counterpart to the Governor’s Cabinet. §10-502(h)(3).¹¹ The Act does not apply, for example, to a meeting between a board of county commissioners that is the executive as well as legislative head of county government and the heads of the departments of county government, because that group of administrative advisers to the executive would be the “local counterpart” to the Governor’s Cabinet in that county.¹² The actual nature of the body, rather than its label, determines whether the entity is subject to the Act.¹³

⁸ (...continued)
cert. denied, 353 Md. 473, 727 A 2d 382 (1999).

⁹ 125 Md. App. at 157.

¹⁰ See Compliance Board Opinion 97-3 (April 16, 1997), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 212. In addition, the Maryland School for the Blind is specifically covered by the Act. §10-502(h)(2)(ii).

¹¹ Other exclusions are the Appalachian States Low Level Radioactive Waste Commission, the governing bodies of hospitals, and certain self-insurance pools.

¹² See Compliance Board Opinion 93-10 (October 15, 1993), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 50; letter of advice from Assistant Attorney General Jack Schwartz, Chief Counsel for Opinions and Advice, to Delegate Stephen J. Braun (September 19, 1991). On the other hand, the “local counterpart” exclusion does not extend to a meeting of town council members in their capacity as heads of municipal departments. Compliance Board Opinion 00-7 (July 19, 2000).

¹³ See Compliance Board Opinions 94-9 (November 15, 1994), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 104; and 93-10 (October 15, 1993), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 50.

B. “Meetings”

The Open Meetings Act applies only if a public body is holding a “meeting.” The Act, however, does not describe the circumstances under which a meeting is required; it merely governs the meetings that do occur. Furthermore, as the Compliance Board put it, the Act does not “control a public body’s decision whether to discuss a matter [at a meeting].”¹⁴

The term “meet” is defined as follows: “to convene a quorum of a public body for the consideration or transaction of public business.” §10-502(g). A quorum is a majority of the membership unless some other provision of law specifies a different number. §10-502(k). Hence, the Act does not apply to conversations between, for instance, any two members of a public body having a membership greater than three. As the Compliance Board put it, the Act “does not preclude politicking and lobbying, individually, outside the meeting.”¹⁵ If a public body announced an open meeting but a quorum of members does not attend, the Act would not govern discussions among the members who did attend. It would be prudent, nonetheless, for those members to maintain the open session that otherwise would have occurred, given their and the public’s expectation that the matters would be discussed openly.

Although the presence of a quorum in the same room would ordinarily characterize a “meeting,” a meeting involving an interchange among a quorum is possible even without joint physical presence. For example, a telephone conference call in which a quorum of members is conducting business simultaneously is not prohibited by the Act, but it is a “meeting” that must comply with the Act.¹⁶ If a public body meets in open session via telephone or video conference, it must afford the

¹⁴ Compliance Board Opinion 99-12 (August 26, 1999), *reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 70, 71-72.

¹⁵ Compliance Board Opinion No. 94-8 (October 26, 1994), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 101, at 103 (internal quotation omitted). *See Telegraph-Herald, Inc. v. City of Dubuque*, 297 N.W.2d 529, 533 (Iowa 1980) (series of individual discussions); *Moberg v. Independent School Dist.*, 336 N.W. 2d 510, 518 (Minn. 1983) (series of telephone calls). Other states have prohibited serial communications. *See* Ann Taylor Schwing, *Open Meeting Laws* §6.40c.

¹⁶ *See* H. Conf. Rep. No. 94-1441, 94th Cong., 2d Sess. 11 (1976), *reprinted in* 1976 U.S. Code Cong. & Adm. News 2247 (explaining scope of term “meeting” in federal Government in the Sunshine Act).

public access to the discussion. A telephone conference can be opened to the public if a speaker-phone is available at an announced location; a video conference, if a monitor is similarly available.

A meeting can also occur in unconventional venues. For example, if a quorum of a public body rides together in a vehicle and conducts public business while doing so, they are holding a meeting. If the meeting is one that the public is entitled to observe, the public body has violated the Act.

Although the common physical presence of members of a public body is not a prerequisite for a “meeting” to occur, the possibility of immediate interaction is.¹⁷ Therefore, the Act does not apply to an exchange of correspondence among members of a public body: “A piece of paper that moves from person to person does not ‘convene a quorum of a public body,’ even if the paper reflects ‘the consideration or transaction of public business.’ Because an exchange of paper is not a ‘meeting,’ the Act does not apply.”¹⁸ Likewise, the Act does not apply to e-mail messages, unless by pre-arrangement a quorum of a public body is present together on line.¹⁹

The General Assembly’s statement of legislative policy speaks of the public’s entitlement “to witness the phases of the deliberation, policy formation, and decision making of public bodies” §10-501(b)(1). “In this regard,” the Court of Appeals has observed, “it is clear that the Act applies, not only to final decisions made by the public body exercising legislative functions at a public meeting, but as well as to all deliberations which precede the actual legislative act or decision, unless authorized by

¹⁷ See Compliance Board Opinion 97-2 (March 3, 1997), *reprinted in 2 Open Meetings Act Compliance Board Opinions* 206, 208-09.

¹⁸ Letter of advice from Jack Schwartz, Chief Counsel for Opinions and Advice, to Jeffery S. Getty, Esquire, City Attorney of Frostburg (July 11, 1995) (citing *City of College Park v. Cotter*, 309 Md. 573, 595 n.32, 525 A.2d 1059 (1987)). See also Compliance Board Opinion 97-4 (April 23, 1997), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 218.

¹⁹ 81 *Opinions of the Attorney General* ____ (1996) [Opinion No. 96-016 (May 22, 1996)]; Compliance Board Opinion No. 99-15 (September 23, 1999), *reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 78.

[the Act] to be closed to the public.”²⁰ This reasoning applies as well to briefings or other information-gathering. This often critical phase of the decision-making process must also be open to public view.²¹ The “public business” refers to matters within the jurisdiction of the public body that are, or foreseeably will be, before the body.²²

A public body cannot avoid its obligations under the Act by labeling its meeting a “work session” or “pre-meeting,” or by gathering together at some location other than the customary meeting room. As the Court of Appeals put it, “the Act makes no distinction between formal and informal meetings of the public body; it simply covers all meetings at which a quorum of the constituent membership of the public body is convened ‘for the purpose of considering or transacting public business.’”²³ The Court of Appeals quoted with approval the following passage from a Florida case:

One purpose of the government in the sunshine law was to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance. Rarely could there be any purpose to a nonpublic premeeting conference except to conduct some part of the decisional process behind closed doors. The statute should be construed so as to frustrate all evasive devices. This can be accomplished only by embracing the collective inquiry and discussion stages within the terms of the statute²⁴

²⁰ *City of New Carrollton v. Rogers*, 287 Md. 56, 72, 410 A.2d 1070 (1980).

²¹ 71 *Opinions of the Attorney General* 26, 29 (1986); Compliance Board Opinions 00-8 (August 4, 2000) and 93-6 (May 18, 1993), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 35.

²² Compliance Board Opinion 98-2 (April 1, 1998), reprinted in 2 *Official Opinions of the Open Meetings Compliance Board* 5, 7.

²³ *Rogers*, 287 Md. at 72.

²⁴ *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (1974).

As the Court of Appeals observed, “every step of the process ... constitutes the consideration or transaction of public business.”²⁵

The fact that a quorum of a body might be together at the same time, however, does not necessarily make that gathering a “meeting” subject to the Act. Rather, both the context for the gathering of the quorum and the content of the discussion must be considered, because the Act does not apply to “a chance encounter, social gathering, or other occasion that is not intended to circumvent this subtitle.” §10-503(a)(2).

If a majority of members of a public body attend a gathering convened by an entity to which the Act does not apply, the Act does not become applicable merely because a quorum is present. In one case, the Court of Special Appeals held that the presence of five members of the Montgomery County Council at a meeting of the local Democratic Central Committee (“DCC”) did not violate the Open Meetings Act.²⁶ Although the members attending would constitute a quorum if convened as such, they did not act in that capacity during the meeting. That is, the Court based its decision on the *function* of the Council members at the DCC meeting, rejecting the argument that the mere presence of the Council members necessarily implicated the Act. Likewise, the Compliance Board had opined even before the court decision, a public body is not subject to the Act simply because a quorum is present at another organization’s meeting.²⁷ At the same time, a public body cannot escape its obligations under the Act if, in the course of another group’s meeting, the public body itself engages in business that is subject to the Act.²⁸

²⁵ *Rogers*, 287 Md. at 72.

²⁶ *Ajamian v. Montgomery County*, 99 Md. App. 665, 639 A.2d 157 (1994), *cert. denied*, 334 Md. 631, 640 A.2d 1132 (1994).

²⁷ Compliance Board Opinion 92-2 (October 23, 1992), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 6.

²⁸ Compliance Board Opinion 92-2, *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* at 7. *See also, e.g.,* Compliance Board Opinions 95-10 (November 21, 1995), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 142; 95-4 (August 14, 1995), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 120; and 94-9 (November 15, 1994), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 104.

The Act also does not apply to meetings with civic or neighborhood groups that are intended merely to allow citizens to raise issues or questions or to allow members of the public body to respond to questions. In the *City of New Carrollton* case, the Court of Appeals considered the Act's applicability to a meeting at which the city's mayor and members of its council went to a neighborhood, at the invitation of a neighborhood group, "for the purpose of answering questions that their residents might have about [the city]." The Court held that "[p]ublic notice of this event was not required by the Act to be given to the citizens of the [city] since, as we view it, it was not a 'meeting' of the public body but rather, within the contemplation of §[10-503(a)(2)], was an [occasion that is not intended to circumvent this subtitle]."²⁹

The content of a quorum's discussion can also determine whether the Act applies. For example, a discussion of a member's personal circumstances (illness, for example), although it might be indirectly related to the carrying out of the member's duties, is not "the consideration or transaction of public business."³⁰ Moreover, the Act is not violated merely because a majority of a public body might gather together informally before a meeting or during a break. So long as the members simply engage in social conversation and avoid any phase of the public body's own decision-making process, the Act would not apply.³¹ Similarly, the Act would not apply to a training session aimed at improving leadership or team-building skills.³² Likewise, a public body does not engage in the conduct of public business merely by listening to a general informational presentation not linked to specific items of pending business. At a library board reception, for example, the Act was not violated when board members heard "a summary of improvements to the libraries as well as problems the libraries

²⁹ 287 Md. at 71.

³⁰ See Compliance Board Opinion 95-7 (October 18, 1995), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 129.

³¹ See *e.g.*, Compliance Board Opinions 97-7 (May 13, 1997), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 227; 96-3 (April 6, 1996), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 157; and 94-6 (August 16, 1994), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 92.

³² 80 *Opinions of the Attorney General* ____ (1995) [Opinion No. 95-058, at 3 (December 20, 1995)].

face in the future”.³³ In a social setting, the Compliance Board has recognized, public officials can be expected to “make stray comments relating to public business.” This inevitable occurrence is not a legal problem so long as the conversation is confined merely to “passing references to the work of the [public] body.”³⁴

Whether a “retreat” is a meeting depends upon its purpose. If, for example, the purpose of the retreat is simply to improve interpersonal relations, the Act would not apply. A retreat or similar informal gathering would be a meeting, however, if it were a device to set the public body’s agenda or discuss the merits of specific matters that are to be dealt with by the body.

C. Subject Matter: Functions Included and Excluded

The scope of the Act is determined in part by the “function” carried out by the public body. If, at a meeting, a public body is engaged in an “advisory function,” “legislative function,” or “quasi-legislative function,” the Act applies.

An *advisory function* is “the study of a matter of public concern or the making of recommendations on the matter, under a delegation of responsibility” by law, gubernatorial or other chief executive designation, or formal action by a public body. §10-502(b). A *legislative function* is “the process or act of ... approving, disapproving, enacting, amending, or repealing a law or other measure to set public policy.”³⁵ It also includes “approving or disapproving an appointment,” §10-502(f); this language refers to the public body’s consideration of an appointment proposed by an executive official or a subordinate of the public body rather than to the public body’s making an appointment.³⁶ A *quasi-legislative function* includes the process of rulemaking,

³³ Compliance Board Opinion 97-7 (May 13, 1997), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 227, 231-32.

³⁴ Compliance Board Opinion 98-2 (April 1, 1998), reprinted in 2 *Official Opinions of the Open Meetings Compliance Board* 5, 7.

³⁵ See, e.g., 64 *Opinions of the Attorney General* 208, 210 (1979) (action of Lottery Commission to increase prize payout is the exercise of a legislative function).

³⁶ Compliance Board Opinions 97-14 (August 22, 1997), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 252; and 95-5 (October 18, 1995), (continued...)

“approving, disapproving, or amending a budget,” and “approving, disapproving, or amending a contract.” §10-502(j). A contract can include an employment contract.³⁷

The Act also applies to functions not defined in the Act at all. In the Compliance Board’s simile, “just as the universe of subatomic particles probably contains particles as yet undetected, so the universe of activities subject to the Open Meetings Act contains functions that are undefined by the Act If a discussion fits within none of the functional definitions of the Act, then the discussion is subject to the Act.”³⁸

The Open Meetings Act does not apply, however, to every possible item of public business. With an important exception to be discussed below, it does not apply when a public body is carrying out an “executive function,” a “judicial function,” or a “quasi-judicial function.” §10-503(a)(1).³⁹

Of the activities that are outside the scope of the Open Meetings Act, the definitions of *judicial function* and *quasi-judicial function* are straightforward. A judicial function is “the exercise of any power of the judicial branch of the State government,” except rulemaking. §10-502(e). A quasi-judicial function is “a determination of ... a contested case” under the Maryland Administrative Procedure Act or any other administrative proceeding subject to judicial review under Title 7, Chapter 200 of the Maryland Rules. §10-502(i).⁴⁰

³⁶ (...continued)

reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 123.

³⁷ Compliance Board Opinion 95-5 (October 18, 1995), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 125.

³⁸ Compliance Board Opinion 94-7, at 3 (August 16, 1994), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 96, 98.

³⁹ For many years, an executive order required agencies in the Executive Branch to hold open meetings (with certain exceptions) even when carrying out an executive function. See Executive Order 01.01.1976.09 (issued May 25, 1976). This executive order was rescinded on January 12, 1987. See Executive Order 01.01.1987.01 (rescinding 52 executive orders said to have become “obsolete”).

⁴⁰ See Compliance Board Opinion 98-1 (March 27, 1998), reprinted in 2 *Official Opinions of the Open Meetings Compliance Board* 123.
(continued...)

The term “*executive function*” is more amorphous, for its definition speaks very broadly of “the administration of” a State or local law or regulation. §10-502(d)(1). Applying this exclusion requires two distinct steps. First, the public body must consider whether the matter to be discussed falls within the definition of any of the other defined functions. If so, then the executive function exclusion is ruled out. §10-502(d)(2). If not, the public body must consider whether the matter to be discussed involves the development of new policy, or merely the application of an already-established law or policy. The executive function exclusion covers only the latter.⁴¹ The Compliance Board has issued more than two dozen opinions examining the executive function exclusion in various contexts. References to all of these are included in Appendix E to this manual.

In counties that have not adopted a form of home rule, in home rule counties without a county executive, and in many municipalities, the legislative body exercises executive functions as well. The applicability of the Act will depend on which role the body is playing.⁴² In a commissioner county, for example, the early phases of the budget preparation process correspond to activities of the county executive in a charter home rule county; these budget preparation activities are, therefore, part of the executive function, rather than the quasi-legislative function of budget review.⁴³

Although executive and quasi-judicial functions are generally outside the scope of the Act, these exclusions do not extend to certain licensing and all zoning matters. Under §10-503(b), the Act applies to a public body when it is meeting to consider:

⁴⁰ (...continued)

Opinions of the Open Meetings Compliance Board 1, 2-3.

⁴¹ See 78 *Opinions of the Attorney General* ____ (1993) [Opinion No. 93-028 (July 28, 1993)]. For example, this office has concluded that the issuance of advisory opinions by the State Ethics Commission is an executive function, not an advisory function. See 64 *Opinions of the Attorney General* 162, 167 n.3 (1979); Opinion No. 78-079 (June 7, 1978) (unpublished).

⁴² See *Board of County Commissioners v. Landmark Community Newspapers*, 293 Md. 595, 602-05, 446 A.2d 63 (1982); Compliance Board Opinion 92-2 (October 23, 1993), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 6.

⁴³ *Landmark Community Newspapers*, 293 Md. at 605. See generally Compliance Board Opinion 97-7 (May 13, 1997), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 227 at 229-30.

- (1) granting a license or permit; or
- (2) a special exception, variance, conditional use, zoning classification, enforcement of any zoning law or regulation, or any other zoning matter.

Thus, it does not matter whether a particular license application or zoning matter would fit within the definition of the quasi-judicial function. If the item deals with “granting a license or permit” or with zoning, the Open Meetings Act applies to the meeting at which the matter is considered.

This provision has resulted in a significant change in practice for some public bodies. Zoning appeals boards, for example, which once were outside the Act when carrying out their quasi-judicial role, are required to conduct their deliberations in open session unless one of the Act’s exceptions applies, and often none will. The General Assembly unquestionably meant to legislate this result; not only is the statutory language unambiguous, but the General Assembly also rejected amendments that would have permitted these deliberations to be nonpublic.⁴⁴

But the reach of §10-503(b) might not have been considered by the General Assembly in another area: occupational licensing applications.⁴⁵ When a person applies for a license under the Health Occupations or Business Occupations and Professions Articles, the licensing board’s meeting to consider the application would fall within the terms of §10-503(b)(1) and therefore is subject to the Open Meeting Act. Of course, exceptions in the Act might permit the meeting to be closed) especially §10-508(a)(2), regarding the protection of personal privacy, and §10-508(a)(13), permitting invocation of confidentiality requirements in other law. These and other exceptions are discussed in Chapter 4 below.

The Act would not apply to suspension or revocation proceedings, which do not concern the “granting” of a license. Nevertheless, the Act does apply even if the

⁴⁴ See generally *Wesley Chapel Bluemount Ass’n v. Baltimore County*, 347 Md. 125 (1997). This case decided that development or subdivision plans are, for purposes of §10-503(b)(2), a “zoning matter.”

⁴⁵ The only example that we could locate in the legislative history of a proceeding to be covered by §10-503(b)(1) is liquor licensing.

licensing board has before it a recommendation that a license application be denied; the item to be considered remains whether to grant the license.

D. Written Material

With the exception of certain provisions dealing with minutes, discussed in Chapter 3, the Open Meetings Act does not regulate access to documents. Instead, the Maryland Public Information Act governs public access to State and local records.⁴⁶ Thus, even if members of a public body refer to certain documents at a public meeting, the Open Meetings Act does not require that the documents themselves be made public; the status of the documents would be determined by the Public Information Act or other law.⁴⁷

⁴⁶ See Title 10, Subtitle 6, Part III of the State Government Article.

⁴⁷ Compliance Board Opinion 99-15 (September 23, 1999), reprinted in 2 *Official Opinions of the Open Meetings Compliance Board* 78.

CHAPTER 3

PROCEDURAL REQUIREMENTS

A. *Notice*

1. Content

If a meeting is subject to the Act, the public body must give “reasonable advance notice of the session.” §10-506(a). Notice of the meeting is required even if the session may be closed under one of the Act’s exceptions. Unless some unusual circumstance makes it impracticable to do so, the public body should give a written notice that includes the date, time, and place of its meeting. If the body intends to conduct all or a part of its meeting in closed session, the notice should say so. §10-506(b).

Although many public bodies have adopted the commendable practice of including an anticipated agenda in their meeting notice, this practice is not required by the Act. Hence, a variation from a previously announced agenda (for example, by adding an item) is not a violation.¹

2. Method

The Act allows a range of methods for giving notice. If the public body is a unit of State government, it may publish its meeting notice in the Maryland Register. §10-506(c)(1). Any public body may give the required notice “by delivery to representatives of the news media who regularly report on sessions of the public body or the activities of the government of which the public body is a part.” §10-506(c)(2). In addition, “if the public body previously has given public notice that this method will be used,” it may give notice “by posting or depositing the notice at a convenient public location at or near the place of the session”) typically, on a bulletin board outside the town hall or similar building. §10-506(c)(3). Finally, a public body may give notice “by any other

¹ Compliance Board Opinions No. 99-7 (June 28, 1999), *reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 52; 98-9 (December 14, 1998), *reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 31; 95-1 (April 13, 1995), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 110; and 92-5 (December 22, 1992), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 16.

reasonable method.” §10-506(c)(4).² A public body has a duty to ensure that staff members do not mistakenly omit giving notice.³ A public body also has a responsibility to notify the public if a previously scheduled meeting is canceled.⁴

3. Timing

The Act does not mandate any particular period of advance notice. Undoubtedly, the General Assembly recognized that sometimes meetings have to be held on short notice. The rule of thumb, given the policies of the Act, is that notice of a future meeting should be given as soon as is practicable after the body has fixed the date, time, and place of its next meeting. If events require the prompt convening of a previously unscheduled meeting, the public body would be well-advised to provide immediate oral notice to reporters who are reasonably thought to be interested, and a written notice should be posted in the customary public place as quickly as possible.⁵ Impromptu meeting or not, the Act’s “procedures *must* be followed ... [for] any session of a public body that is within the scope of the Open Meetings Act.”⁶

B. Choice of Meeting Site

The Act’s statement of legislative policy calls on public bodies to hold meetings “in places reasonably accessible to individuals who would like to attend these meetings.” §10-501(c). Therefore, when a public body is considering where to meet,

² Cable television might, under some circumstances, be a “reasonable method” of notice. See Compliance Board Opinion 96-5 (May 1, 1996), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 166. A written version of the notice, however, should also be available to the public.

³ Compliance Board Opinion 93-8 (July 16, 1993), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 44.

⁴ Compliance Board Opinion 96-11 (November 5, 1996), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 186.

⁵ Compliance Board Opinions 96-11 (November 5, 1996), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 186; and 96-10 (October 23, 1996), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 183.

⁶ Compliance Board Opinion 93-1 (January 7, 1993), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 20.

it should choose a room large enough to accommodate those members of the public and the press who are expected to attend. The location should be as convenient as possible for public attendance. “[T]he law would almost certainly be interpreted to preclude selection of a meeting location so distant and inconvenient as to prevent public attendance. Selection of such a site would subvert the policy of open meetings”⁷ Further, the room should be accessible to members of the public with disabilities.⁸ Individuals who are deaf may request that an interpreter be available at a public hearing; if feasible, the unit holding the hearing should provide the interpreter. §10-507.1.⁹

Should a larger crowd than expected attend, the body may move to a larger facility if one is readily available or postpone the meeting until a larger space can be found. These are matters of discretion, however, not imposed by the Act.

C. *Voting Requirements*

In general, the Open Meetings Act does not lay out rules of parliamentary procedure. It is not intended to supplant or substitute for a public body’s own rules or guidelines, such as Robert’s Rules of Order, for the conduct of meetings. The Act does superimpose certain requirements, however, no matter what procedures the body ordinarily follows.

The Act requires certain formal steps before a public body may meet in closed session.¹⁰ First, the presiding officer must “conduct a recorded vote on the closing of

⁷ Ann Taylor Schwing, *Open Meeting Laws* §5.72, at 213.

⁸ The Compliance Board has ruled that the Act is not violated if individuals with mobility impairments are provided assistance to attend a meeting in a facility that is not barrier-free. Compliance Board Opinions 97-11, (May 29, 1997), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 245; and 97-9 (May 20, 1997), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 237, 239. Of course, the Compliance Board did not address the impact of the Americans with Disabilities Act.

⁹ This provision, enacted by Chapter 31 of the Laws of Maryland 1997 as a recodification of former Article 30, §2, applies to all “units” within the Executive and Legislative Branches. The term “unit,” although undefined, is broader than “public body.” Although this provision does not itself apply to local units of government, compliance with it will avoid potential liability issues under the Americans with Disabilities Act.

¹⁰ If the public body is engaged in an executive, judicial, or quasi-judicial function, it
(continued...)

the session.” §10-508(d)(2)(i). In accordance with customary parliamentary procedures, this vote would occur on a motion, properly seconded, to close the meeting. The motion should state the legal basis for the proposed closing. The body may hold the closed session only if the motion is supported by a majority of the members present and voting. §10-508(d)(1). This vote must take place in an open session immediately preceding the closed session.¹¹ “[T]hose who participate in a closed session are accountable for the decision to close.”¹² Hence, a public body may not close a meeting based on a vote that occurred at a prior session.¹³

The presiding officer must ensure that a written statement is prepared setting out the reason for closing the meeting, the specific provision of the Open Meetings Act that allows the meeting to be closed, and the topics to be discussed at the closed session. §10-508(d)(2)(ii).¹⁴ While this statement need not disclose sensitive information that the Act permits to be discussed in closed session, the statement ought to be more than “uninformative boilerplate.”¹⁵ This statement is a matter of public record and is to be sent to the Open Meeting Compliance Board if anyone objects to the closing of a meeting. §10-508(d)(3) and (4). An objection, however, is not itself a complaint to the Board, the procedures for which are summarized in Chapter 5.

D. Minutes

The Open Meetings Act requires that public bodies keep written minutes of all of their meetings, open and closed, §10-509(b). The maintenance of untranscribed

¹⁰ (...continued)
need not vote to close a meeting, because the Act is inapplicable. See Chapter 2, Part C.

¹¹ Compliance Board Opinions 00-2, at 3 (April 10, 2000), and 96-12, at 3 (November 20, 1996), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 191.

¹² Compliance Board Opinion 00-2, at 3 (April 10, 2000).

¹³ *Id.*

¹⁴ A form for the required statement is set out in Appendix C.

¹⁵ See, e.g., Compliance Board Opinion 93-2 (January 7, 1993), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 23, 26.

audiotapes does not suffice.¹⁶ Minutes are to be prepared as soon as “practicable.” §10-509(b). This requirement, the Compliance Board has opined, means that “[t]he cycle of minutes preparation should parallel the cycle of a public body’s meetings, with only the lag time needed to draft and review minutes.”¹⁷ The Compliance Board found unlawful “routine delays of several months or longer in preparing minutes.”¹⁸ The minutes of open meetings are publicly available. §10-509(d). Draft minutes, however, need not be made available until they are approved.¹⁹

The Act requires that the following information be set out in the minutes, whether the meeting is open or closed: “each item” considered, the action taken on each item, and each recorded vote. §10-509(c)(1).²⁰ Although the Act does not specify the level of detail in the description of an “item,” the description should be sufficient so that a member of the public who examines the minutes of an open meeting (or of a closed meeting, if the minutes are later released) can understand what the issue was.

A public body may, but is not required to, tape record a closed session. §10-509(c)(3)(i). The minutes and any tape recording of a closed session are generally not open to public inspection, unless the majority of the public body votes in favor of disclosing them. §10-509(c)(4)(iii). When a public body has closed a meeting to discuss the investment of public funds or the marketing of public securities, however, the minutes and any tape recording of that portion of a closed session must be made available to the public after the transactions have occurred. §10-509(c)(4)(i) and (ii). The Act does not require that the minutes of a closed session be released after the completion of other transactions) for example, the purchase of real estate) but the public body might choose to make the minutes public at that time unless doing so would

¹⁶ Compliance Board Opinion 99-18 (November 4, 1999), *reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 87, 90.

¹⁷ Compliance Board Opinion 99-18 (October 7, 1999), *reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 87, 89.

¹⁸ *Id.* See also Compliance Board Opinion 98-3 (May 12, 1998), *reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 11, 12.

¹⁹ Compliance Board Opinion 98-3 (May 12, 1998), *reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 13.

²⁰ See Compliance Board Opinion No. 96-2 (March 4, 1996), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 155.

cause some harm (as, for example, if negotiations for a similar tract of land were still in progress). Closed-session minutes are required to be maintained for one year. §10-509(c)(3)(ii).

Finally, the public body has a duty to disclose certain information about a closed meeting. The minutes of the next open meeting must include “a statement of the time, place, and purpose of the [previous] closed session,” a record of how the members voted on the motion to close the session, a citation of the provision of the Act that allowed the meeting to be closed, and “a listing of the topics of discussion, persons present, and each action taken during the session.” §10-509(c)(2).

The degree of detail in the minutes need not negate the confidentiality that the closed session was meant to preserve. For example, if disclosing the fact that a particular property was under consideration for acquisition might affect the price, the minutes need not disclose that information.²¹ Another example relates to settlement proposals. Suppose that a public body closed a meeting to seek advice from its counsel about a settlement proposal in pending litigation. The statement in the minutes of the next open meeting need not disclose details like the nature of the proposal or the exact response of the public body.²² At the same time, a public body must avoid the use of evasive boilerplate, a practice that does not meet the objective of §10-508(d)(2). A description that the topic of a closed meeting was, simply, a “personnel matter” would be impermissibly uninformative, because that description merely repeats the pertinent statutory text.²³ As the Compliance Board wrote, “[A public body] can say in the minutes, for example, that the topic was consideration of a settlement proposal in a

²¹ See Compliance Board Opinions 95-1 (April 13, 1995), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 110; 94-5 (July 29, 1994), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 73; and 92-5 (December 22, 1992), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 16.

²² See Compliance Board Opinion 94-5, (July 29, 1994), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 73, 74.

²³ See, e.g., Compliance Board Opinions 95-1 (January 7, 1993), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 110; and 94-5 (July 29, 1995), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 73.

lawsuit without disclosing any details about the proposal. But language that gives the public no information whatever about the topic of discussion is insufficient.”²⁴

²⁴ Compliance Board Opinion 98-5 (June 18, 1998), *reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 18, 20.

CHAPTER 4

OPEN AND CLOSED MEETINGS

A. General Openness Requirement

A public body must hold an open meeting unless the matter under discussion is entirely outside the scope of the Open Meetings Act) for example, if it concerns an executive, judicial, or quasi-judicial function other than licensing or zoning) or if one of the specific exceptions set out in §10-508 is applicable.¹ “When the ... Act requires a meeting to be open, it must be open to all. The Act does not contain an intermediate category of ‘partially open’ meetings, to which some members of the public are admitted and others excluded Accordingly, a public body may not bar reporters from an open meeting.”²

In some cases, a public body may find that a meeting agenda will involve a combination of matters, some of which must be discussed in open session and others of which may be discussed in closed session. The Act does not prohibit a public body from segregating closed session matters prior to the beginning of an open session. The notice of the closed meeting, however, should “make clear to members of the public that a meeting scheduled to begin at, for example, 9:00 a.m. will commence with a closed session, the open session to commence at 10:00 a.m.”³ Of course, a notice of this kind merely states an expectation; if the Act applies, the actual closing of the session requires compliance with the procedures discussed in Chapter 3.

Even if a public body has a basis in §10-508 to conduct a closed session, the public body must begin its meeting in open session so that a vote may be taken and the

¹ See 78 *Opinions of the Attorney General* ____ (1993) [Opinion No. 93-028, at 3 (July 28, 1993)].

² Compliance Board Opinion 99-11 (August 12, 1999), *reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 67, 69.

³ Compliance Board Opinion 93-2 (January 7, 1993), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 23. See §10-506(a) and (b)(3).

required written statement may be issued.⁴ Under the Act, all justifications for closing a meeting must be presented at this time. After-the-fact justifications, not presented contemporaneously with closing, are ineffective.⁵

B. Observing and Taping

The Act entitles members of the public to observe open sessions of public bodies; it does not afford the public any right to participate in the discussion.⁶ Indeed, disruptive attempts at participation can result in removal from the meeting. §10-507(c)(1).⁷ Conversely, the Act does not affect the application of any other law or policy that *does* grant members of the public the opportunity to be heard at a meeting.

Every public body has a duty to “adopt and enforce reasonable rules regarding the conduct of persons attending its meetings and the videotaping, televising, photographing, broadcasting, or recording of its meetings.” §10-507(b). The Open Meetings Compliance Board has prepared model rules to assist public bodies in carrying out this obligation; these are included in this manual as Appendix D. As introduced, the 1991 legislation (Senate Bill 170) would have expressly allowed public meetings to be videotaped, televised, photographed, broadcast, or recorded. That provision was deleted by amendment. Nevertheless, the Act’s statement of public policy refers to “[t]he ability of the public, its representatives, and the media to attend, report on, and *broadcast* meetings of public bodies” §10-501(b)(1).

⁴ *Id.* (citing §10-508(d)).

⁵ See Compliance Board Opinions 95-03 (July 12, 1995), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 117; 94-7 (August 16, 1994), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 96; 94-5 (July 29, 1994), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 73 and 93-11 (November 20, 1993), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 53.

⁶ Compliance Board Opinion No. 97-7 (May 13, 1997), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 227.

⁷ Under §10-507(c)(2), “[u]nless the public body or its members or agents acted maliciously, the public body, members, and agents are not liable for having an individual removed”

Accordingly, a public body may not bar the use of recording and transmitting devices, for a flat prohibition is not “reasonable”: “[A] rule restricting videotaping or other similar activities is ‘reasonable’ only if it satisfies two criteria: (i) that the rule is needed to protect the legitimate rights of others at the meeting and (ii) that the rule does so by means that are consistent with the goals of the Act.”⁸ The “legitimate rights” of attendees at an open meeting does *not* include a right to avoid photography: “There is no right to be protected against the gaze of an observer in a public forum, or against the lens of the observer’s camera.”⁹ If a public body is concerned about the disruptive effect of bright lights or camera operators moving around the room, it can impose appropriate restrictions.

C. *Exceptions Allowing Closed Meeting*

If a meeting is within the scope of the Open Meetings Act, it *must* be open unless one of the specific reasons for closing it can legitimately be identified. A public body may not avoid an open meeting merely because a topic is controversial or potentially embarrassing.¹⁰

Fourteen circumstances exist under which a public body may close a meeting in its entirety or may close a portion of a meeting that is otherwise required to be open. All fourteen exceptions are to be “strictly construed in favor of open meetings” §10-508(c). Nothing in the Open Meetings Act itself *requires* a public body to invoke an exception; unless some other confidentiality law applies, it may meet in open session even if, under the Act, it could legally meet in closed session.¹¹ When a public body does invoke one of these exceptions, it must limit its discussion to that topic only. If the public body wishes to discuss other matters, it must return to open session, either to discuss the additional matter in public or vote to close the session based on another applicable exception.

⁸ Compliance Board Opinion 95-9 (November 21, 1995), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 137, 140.

⁹ *Id.* at 141.

¹⁰ The 1977 Open Meetings Act contained a provision, former §10-508(a)(14), under which a public body could close a meeting to “satisfy an exceptional reason that, by two-thirds vote of the members of the public body who are present at the session, the public body finds to be so compelling that the reason overrides the general public policy in favor of open sessions.” This provision was deleted when the Act was revamped in 1991.

¹¹ See 65 *Opinions of the Attorney General* 347, 348 (1980).

One provision, §10-508(a)(13), recognizes that other law might require a meeting to be closed. Thus, it permits a public body to close a meeting in order to “comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter.” Examples of other law that might require a meeting to be closed include federal law,¹² a State constitutional privilege,¹³ a State statute,¹⁴ and a common law privilege.¹⁵

Two of the exceptions in §10-508 are designed to protect the privacy of individuals. One generally permits a meeting to be closed to “protect the privacy or reputation of individuals with respect to a matter that is not related to public business.” §10-508(a)(2). The other permits a meeting to be closed when the discussion deals with a “personnel matter” affecting one or more specific individuals. §10-508(a)(1). This exception includes discussion of possible personnel actions, compensation issues, and “performance evaluation of appointees, employees, or officials over whom [the public body] has jurisdiction.” §10-508(a)(1)(i). Like the other exceptions, this one is to be construed narrowly. It is inapplicable to discussions of issues affecting classes of public employees, as distinct from specific individuals.¹⁶

All of the other exceptions are intended to protect the public interest by allowing a body to discuss genuinely sensitive issues in closed session. Four of these exceptions relate to business or financial transactions: the acquisition of real property, §10-508(a)(3); proposals for a business or industrial organization to locate, expand, or

¹² *Potomac Group Home v. Montgomery County*, 823 F. Supp 1285, 1299 (D. Md. 1993).

¹³ Bill review letter (Senate Bill 170) from Attorney General J. Joseph Curran, Jr. to Governor William Donald Schaefer (May 6, 1991).

¹⁴ Letter of advice from Assistant Attorney General Jack Schwartz, Chief Counsel for Opinions and Advice, to Barbara R. Trader, Esquire (October 7, 1996) (discussing provision of Public Information Act that bars disclosure of personnel records).

¹⁵ Compliance Board Opinion 94-7 (August 16, 1994), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 96. *See also* 65 *Opinions of the Attorney General* 341, 343-44 (1980).

¹⁶ The fullest discussion of this exception appears in Compliance Board Opinion 94-5 (July 29, 1994), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 73. *See also, e.g.,* Compliance Board Opinion 97-8 (May 14, 1997), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 233, 236.

remain in the State, §10-508(a)(4);¹⁷ the investment of public funds, §10-508(a)(5); and the marketing of public securities, §10-508(a)(6).

The Act also allows a public body to close a meeting in order to “consult with counsel to obtain legal advice.” §10-508(a)(7). This exception is more narrowly worded than its predecessor in the original Act. Prior to the 1991 amendments, this exception authorized the closing of a meeting to “consult with counsel on a legal matter.” The Legislature tightened the wording to avoid the situation in which a lawyer sat in on a meeting to give a colorable basis for invoking this exception but was not a genuine participant in the discussion (lawyer as potted plant). As reworded by the 1991 amendments, §10-508(a)(7) contemplates that the issue is one on which the body seeks and obtains the advice of the lawyer. As the Compliance Board put it, “the exception is a relatively narrow one, limited to the give-and-take between lawyer and client in the context of the bona fide rendering of advice.”¹⁸ Furthermore, “once the legal advice is obtained, the public body may not remain in closed session to discuss policy issues or other matters. The exception for consultation with counsel for “may *never* be invoked unless the lawyer is present at the meeting.”¹⁹

Another exception, §10-508(a)(8), permits a public body to close a meeting in order to consult with any individual “about pending or potential litigation.” The exception can be invoked “only when the discussion *directly relates* to the pending or potential litigation; it may not [be invoked to] close a portion of the discussion that deals separately with the underlying [policy] issue.”²⁰ The exception applies only if the potential for litigation is concrete, rather than speculative.²¹

¹⁷ This exception applies to a discussion about a company’s plans to relocate within the State. Compliance Board Opinion No. 94-5 (July 29, 1994), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 73.

¹⁸ Compliance Board Opinion 00-5 (June 28, 2000), at 6.

¹⁹ Compliance Board Opinion 93-6 (May 18, 1993), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 35. *See also* Compliance Board Opinion 00-5 (June 28, 2000), at 7.

²⁰ Compliance Board Opinion 94-1, (March 22, 1994), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 56, 60.

²¹ Compliance Board Opinion 97-9 (May 20, 1997), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 237, 240.

Two other exceptions allow a public body to close a meeting in order to deal effectively with labor negotiations and procurement matters. Under §10-508(a)(9), a public body may “conduct collective bargaining negotiations or consider matters that relate to the negotiations” in closed session. With respect to procurement, “before a contract is awarded or bids are opened,” a public body may meet in closed session to “discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding proposal process.” §10-508(a)(14). This exception is evidently intended to protect against premature disclosure of sensitive information like the public body’s negotiating strategy. Conversely, the exception was not intended to permit secret discussion by a public body of open bids submitted by various bidders. More generally, as the Compliance Board put it, “there is no exception in the Act for ‘negotiation issues’ as such.”²² Only negotiations of the types specified in the exceptions are covered.

Finally, three other exceptions deal with sensitive issues warranting closed meetings: the discussion of “public security,” if “public discussion would constitute a risk to the public or public security,” §10-508(a)(10); the preparation, administration, or grading of “a scholastic, licensing, or qualifying examination,” §10-508(a)(11); and the conduct or discussion of “an investigative proceeding on actual or possible criminal conduct,” §10-508(a)(12).

The Open Meetings Act does not prohibit a public body from taking final action at a session that is properly closed to the public under one of the exceptions. So, for example, a public body may vote to make a particular kind of investment of public funds in closed session. Other law, however, may bar final action in a closed session.²³

²² Compliance Board Opinion 97-8 (May 14, 1997), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 233, 234 (exception does not apply to negotiations among government jurisdictions over cost-sharing arrangement).

²³ See Article 23A, §8 and Article 25, §5 of the Maryland Code (municipal and county legislative bodies may not finally adopt an “ordinance, resolution, rule or regulation” in an executive session).

CHAPTER 5

ENFORCEMENT

A. *Open Meetings Compliance Board*

The Open Meetings Compliance Board, which began its activities in 1992, has responsibility to educate public bodies about their duties under the Act, to provide a nonjudicial forum for resolving disputes about the Act’s application, and to offer recommendations to the General Assembly about amending the Act. The Board consists of three members, appointed by the Governor, serving three-year terms. §10-502.2. The Attorney General’s Office provides the staff for the Board.

The Board’s primary duty is to “receive, review, and resolve complaints from any person alleging a violation of the provisions of this [Act] and issue a written opinion as to whether a violation has occurred.” §10-502.4(a). The Board’s procedures, as outlined in the Act, call for a written complaint stating the nature of the alleged violation; a written response by the public body within 30 days; an “informal conference,” if the Board wants more information or believes that oral presentations would be helpful;¹ and the issuance of a written opinion by the Board. §10-502.5. The Board is not set up to resolve disputed issues of fact. If key facts about a complaint are disputed, the Board will invoke its express authority to “state that the Board is unable to resolve the complaint.” §10-502.5(f)(2).²

The Board’s opinions are “advisory only.” §10-502.5(i)(1). The Board is prohibited from “requir[ing] or compel[ling] any specific actions by a public body.” §10-502.5(i)(2). Indeed, if a complainant brings a lawsuit about a public body’s alleged violation of the Act after the Board has issued its opinion, the opinion may not even be introduced into evidence in court. §10-502.5(j).

¹ Interestingly, the Act does not apply to these informal conferences conducted by the Board. “[A] determination of ... a complaint by the Board” is defined as “quasi-judicial” and is therefore outside the scope of the Act. §§10-502(i)(3) and 10-503(a)(1)(iii).

² See, e.g., Compliance Board Opinions 94-1 (March 22, 1994), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 56; and 93-7 (June 22, 1993), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 38.

In addition to receiving complaints of alleged prior violations of the Act, the Board also seeks to resolve disputes prospectively. Anyone who believes that a public body is about to hold a closed meeting when the Act requires the meeting to be open may complain, orally or in writing, to a member of the Board (or, under authorization by the Board, to its counsel in the Attorney General's Office). The person who receives the complaint is to look into the situation and advise the Board, following up later with a written report. If the Board concludes that a violation of the Act would occur if the meeting were not open, the Board's representative is to counsel the public body in an effort to achieve compliance with the Act. §10-502.6.

Finally, the Board is responsible for studying "ongoing compliance" with the Act by public bodies and is to "make recommendations to the General Assembly for improvements in [the Act]." §10-502.4(c). The vehicle for any recommendations is an annual report to the Governor and the General Assembly, which is to contain any recommended amendments as well as a discussion of the Board's activities.³

B. Judicial Enforcement

A person who believes that he or she has been adversely affected by a public body's failure to comply with the Open Meetings Act may file suit against the public body in circuit court. The suit is to be filed within 45 days of the alleged violation. §10-510(b)(2) and (3). If the person has chosen to file a complaint with the Open Meetings Compliance Board, the 45-day statute of limitations is tolled while the Board considers the matter. §10-510(b)(4).

If a person files suit, he or she must overcome a presumption that the public body did not violate the Act. §10-510(c).⁴ But if the person succeeds in carrying that burden, the court has broad authority to issue injunctive or declaratory relief. In particular, "if the court finds that a public body willfully failed to comply with §§10-505, 10-506, 10-507 or 10-509(c) of this [Act] and that no other remedy is adequate, [the court may]

³ The Board has specific responsibility to assess the impact of the expanded definition of "public body" discussed in Chapter 2 .

⁴ This provision is not applicable to complaints to the Compliance Board. *See, e.g.,* Compliance Board Opinion 96-9 (October 15, 1996), *reprinted in 1 Official Opinions of the Open Meetings Compliance Board* 180-81.

declare void the final action of the public body.” §10-510(d)(4).⁵ In addition, the court may award attorneys fees and other litigation expenses to the prevailing party. §10-510(d)(5)(i). The award of fees is not automatic,⁶ and there is no presumption that a party who prevails on the merits is entitled to attorneys fees.⁷ Fees may be awarded, however, even if the public body acted in good faith.⁸

Three types of actions are excluded from judicial review: appropriating public funds, levying a tax, or issuing bonds or other debt obligations. §10-510(a)(i). The exclusion regarding appropriations encompasses “[t]he entire budgetary process.”⁹

C. Civil Penalty

The 1991 amendments to the Open Meetings Act added a civil (not criminal) penalty provision for knowing and willful violations of the Act. Specifically: “A member of a public body who willfully participates in a meeting of the body with knowledge that the meeting is being held in violation of the [Act] is subject to a civil penalty not to exceed \$100.” §10-511. Only a court may impose a civil penalty; the Compliance Board may not.¹⁰ The civil penalty provision would not be applicable if the

⁵ Although Article 8 of the Maryland Declaration of Rights bars legislation that would vest in the courts power to void governmental actions on broad public policy grounds, the standards in §10-510(d)(4) are constitutionally sufficient. See *Sugarloaf Citizens Ass’n v. Gudis*, 319 Md. 558, 569, 573 A.2d 1325 (1990). The meaning of the “willful failure” standard is currently under review in the Court of Appeals. *Suburban Hospital, Inc. v. Maryland Health Resources Planning Comm’n*, 125 Md. App. 579, 726 A.2d 807, cert. granted, 354 Md. 570 (1999).

⁶ *Wesley Chapel Bluemount Ass’n v. Baltimore County*, 347 Md. 125, 699 A.2d 434 (1997) (identifying factors for courts to consider).

⁷ *Baltimore County v. Wesley Chapel Bluemount Ass’n*, 128 Md. App. 180, 736 A.2d 1177 (1999). See also *Malamis v. Stein*, 69 Md. App. 221, 516 A.2d 1039 (1986) (award of fees within trial court’s discretion).

⁸ *Baltimore County*, 128 Md. App. at 189.

⁹ *Board of County Commissioners v. Landmark Community Newspapers*, 293 Md. 595, 607, 446 A.2d 63 (1982).

¹⁰ Compliance Board Opinion 97-1 (January 14, 1997), reprinted in 1 *Official Opinions of the Open Meetings Compliance Board* 201, 205.

violation of the Act were the result of mere carelessness, a good-faith mistake, or reliance on incorrect legal advice.

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**Annotated Code of Maryland
State Government Article**

Subtitle 5. Meetings

10-501. Legislative policy.

(a) It is essential to the maintenance of a democratic society that, except in special and appropriate circumstances:

- (1) public business be performed in an open and public manner; and
- (2) citizens be allowed to observe:
 - (i) the performance of public officials; and
 - (ii) the deliberations and decisions that the making of public policy involves.

(b) (1) The ability of the public, its representatives, and the media to attend, report on, and broadcast meetings of public bodies and to witness the phases of the deliberation, policy formation, and decision making of public bodies ensures the accountability of government to the citizens of the State.

(2) The conduct of public business in open meetings increases the faith of the public in government and enhances the effectiveness of the public in fulfilling its role in a democratic society.

(c) Except in special and appropriate circumstances when meetings of public bodies may be closed under this subtitle, it is the public policy of the State that the public be provided with adequate notice of the time and location of meetings of public bodies, which shall be held in places reasonably accessible to individuals who would like to attend these meetings.

10-502. Definitions

(a) In this subtitle the following words have the meanings indicated.

(b) “Advisory function” means the study of a matter of public concern or the making of recommendations on the matter, under a delegation of responsibility by:

- (1) law;
- (2) the Governor;

Text of the Open Meetings Act

- (3) the chief executive officer of a political subdivision of the State; or
- (4) formal action by or for a public body that exercises an executive, judicial, legislative, quasi-judicial, or quasi-legislative function.
- (c) “Board” means the State Open Meetings Law Compliance Board.
- (d) (1) “Executive function” means the administration of:
 - (i) a law of the State;
 - (ii) a law of a political subdivision of the State; or
 - (iii) a rule, regulation, or bylaw of a public body.
- (2) “Executive function” does not include:
 - (i) an advisory function;
 - (ii) a judicial function;
 - (iii) a legislative function;
 - (iv) a quasi-judicial function; or
 - (v) a quasi-legislative function.
- (e) (1) “Judicial function” means the exercise of any power of the Judicial Branch of the State government.
- (2) “Judicial function” includes the exercise of:
 - (i) a power for which Article IV, § 1 of the Maryland Constitution provides;
 - (ii) a function of a grand jury;
 - (iii) a function of a petit jury;
 - (iv) a function of the Commission on Judicial Disabilities; and
 - (v) a function of a judicial nominating commission.
- (3) “Judicial function” does not include the exercise of rulemaking power by a court.
- (f) “Legislative function” means the process or act of:
 - (1) approving, disapproving, enacting, amending, or repealing a law or other measure to set public policy;
 - (2) approving or disapproving an appointment;
 - (3) proposing or ratifying a constitution or constitutional amendment; or
 - (4) proposing or ratifying a charter or charter amendment.
- (g) “Meet” means to convene a quorum of a public body for the consideration or transaction of public business.
- (h) (1) “Public body” means an entity that:
 - (i) consists of at least 2 individuals; and

Text of the Open Meetings Act

- (ii) is created by:
 - 1. the Maryland Constitution;
 - 2. a State statute;
 - 3. a county charter;
 - 4. an ordinance;
 - 5. a rule, resolution, or bylaw;
 - 6. an executive order of the Governor; or
 - 7. an executive order of the chief executive authority of a political subdivision of the State.
- (2) “Public body” includes:
 - (i) any multimember board, commission, or committee appointed by the Governor or the chief executive authority of a political subdivision of the State, if the entity includes in its membership at least 2 individuals not employed by the State or a political subdivision of the State; and
 - (ii) The Maryland School for the Blind.
- (3) “Public body” does not include:
 - (i) any single member entity;
 - (ii) any judicial nominating commission;
 - (iii) any grand jury;
 - (iv) any petit jury;
 - (v) the Appalachian States Low Level Radioactive Waste Commission established in § 7-302 of the Environment Article;
 - (vi) except when a court is exercising rulemaking power, any court established in accordance with Article IV of the Maryland Constitution;
 - (vii) the Governor’s cabinet, the Governor’s Executive Council as provided in Title 8, Subtitle 1 of the State Government Article, or any committee of the Executive Council;
 - (viii) a local government’s counterpart to the Governor’s cabinet, Executive Council, or any committee of the counterpart of the Executive Council;
 - (ix) the governing body of a hospital as defined in § 19-301(g) of the Health - General Article; and
 - (x) a self-insurance pool that is established in accordance with Title 19, Subtitle 6 of the Insurance Article or § 9-404 of the Labor and Employment Article by:

Text of the Open Meetings Act

1. a public entity, as defined in § 19-602 of the Insurance Article; or
 2. a county or municipal corporation, as defined in § 9-404 of the Labor and Employment Article.
- (i) “Quasi-judicial function” means a determination of:
- (1) a contested case to which Subtitle 2 of this title applies;
 - (2) a proceeding before an administrative agency for which Title 7, Chapter 200 of the Maryland Rules would govern judicial review; or
 - (3) a complaint by the Board in accordance with this subtitle.
- (j) “Quasi-legislative function” means the process or act of:
- (1) adopting, disapproving, amending, or repealing a rule, regulation, or bylaw that has the force of law, including a rule of a court;
 - (2) approving, disapproving, or amending a budget; or
 - (3) approving, disapproving, or amending a contract.
- (k) “Quorum” means:
- (1) a majority of the members of a public body; or
 - (2) any different number that law requires.

10-502.1. State Open Meetings Law Compliance Board.

There is a State Open Meetings Law Compliance Board.

10-502.2. Membership.

- (a) (1) The Board consists of 3 members, at least one of whom shall be an attorney admitted to the Maryland Bar, appointed by the Governor with the advice and consent of the Senate.
- (2) From among the members of the Board, the Governor shall appoint a chairman.
- (b) (1) The term of a member is 3 years.
- (2) The terms of members are staggered as required by the terms provided for members of the Board on July 1, 1991.

Text of the Open Meetings Act

- (3) At the end of a term, a member continues to serve until a successor is appointed.
- (4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed.
- (5) A member may not serve for more than 2 consecutive 3-year terms.

10-502.3. Quorum; meetings; compensation.

- (a) A majority of the full authorized membership of the Board is a quorum.
- (b) The Board shall meet at a time and place to be determined by the Board.
- (c) Each member of the Board:
 - (1) may not receive compensation; and
 - (2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.
- (d) The Office of the Attorney General shall provide staff for the Board.

10-502.4. Duties.

- (a) The Board shall receive, review, and resolve complaints from any person alleging a violation of the provisions of this subtitle and issue a written opinion as to whether a violation has occurred.
- (b) The Board shall receive and review any complaint alleging a prospective violation of the provisions of this subtitle as provided under § 10-502.6 of this subtitle.
- (c) The Board shall study ongoing compliance with the provisions of this subtitle by public bodies and make recommendations to the General Assembly for improvements in this subtitle.
- (d) On or before January 1, 1992, the Board, in conjunction with the Office of the Attorney General and other interested organizations or persons, shall develop and conduct educational programs on the requirements of the open meetings law for the staffs and attorneys of:
 - (1) public bodies;
 - (2) the Maryland Municipal League; and
 - (3) the Maryland Association of Counties.

Text of the Open Meetings Act

- (e) (1) On or before July 1 of each year, the Board shall submit an annual report to the Governor and the General Assembly.
- (2) The report shall include a description of:
 - (i) the activities of the Board;
 - (ii) the opinions of the Board in any cases brought before it;
 - (iii) the number and nature of complaints filed with the Board, including a discussion of complaints concerning the reasonableness of the notice provided for meetings;
 - (iv) the impact on State and local governments of the provisions of § 10-502(h)(2) of this article, including a discussion of how the affected entities have adhered to the requirements of this subtitle; and
 - (v) any recommendations for improvements to the provisions of this subtitle.

10-502.5. Complaint.

- (a) Any person may file a written complaint with the Board seeking a written opinion from the Board on the application of the provisions of this subtitle to the action of a public body covered by this subtitle.
- (b) The complaint shall:
 - (1) be signed by the person making the complaint; and
 - (2) identify the public body, specify the action of the public body, the date of the action, and the circumstances of the action.
- (c) (1) On receipt of the written complaint, the Board shall promptly send the complaint to the public body identified in the complaint and request that a response to the complaint be sent to the Board.
- (2) The public body shall file a written response to the complaint within 30 days of its receipt of the complaint.
- (3) If after 45 days, the public body has not filed a written response, the Board shall decide the case on the facts before it.
- (d) The Board shall:
 - (1) review the complaint and any response; and
 - (2) if the information in the complaint and response is sufficient to permit a determination, issue a written opinion as to whether a violation of the

Text of the Open Meetings Act

provisions of this subtitle has occurred or will occur not later than 30 days after receiving the response.

(e) (1) If the Board is unable to reach a determination based on the written submissions before it, the Board may schedule an informal conference to hear from the complainant, the public body, or any other person with relevant information about the subject of the complaint.

(2) An informal conference scheduled by the Board is not a “contested case” within the meaning of § 10-202 (d) of this article.

(3) The Board shall issue a written opinion not later than 30 days following the informal conference.

(f) (1) If the Board is unable to render an opinion on a complaint within the time periods specified in subsection (d) or (e) of this section, the Board shall:

(i) state in writing the reason for its inability; and

(ii) issue an opinion as soon as possible but not later than 90 days after the filing of the complaint.

(2) An opinion of the Board may state that the Board is unable to resolve the complaint.

(g) The Board shall send a copy of the written opinion to the complainant and to the affected public body.

(h) (1) On a periodic basis, the Board may send to any public body in the State any written opinion that will provide the public body with guidance on compliance with the provisions of this subtitle.

(2) On request, a copy of a written opinion shall be provided to any person.

(i) (1) The opinions of the Board are advisory only.

(2) The Board may not require or compel any specific actions by a public body.

(j) A written opinion issued by the Board may not be introduced as evidence in a proceeding conducted in accordance with § 10-510 of this subtitle.

10-502.6. Same) Prospective violation.

(a) On receipt of an oral or written complaint by any person that a meeting required to be open under the provisions of this subtitle will be closed in violation of

Text of the Open Meetings Act

this subtitle, the Board acting through its chairman, a designated Board member, or any authorized staff person available to the Board may contact the public body to determine the nature of the meeting that will be held and the reason for the expected closure of the meeting.

(b) When at least 2 members of the Board conclude that a violation of this subtitle may occur if the closed meeting is held, the person acting for the Board under subsection (a) of this section immediately shall inform the public body of the potential violation and any lawful means that are available for conducting its meeting to achieve the purposes of the public body.

(c) The person acting for the Board shall inform the person who filed the complaint under subsection (a) of this section of the result of any effort to achieve compliance with this subtitle under subsection (b) of this section.

(d) The person acting for the Board shall file a written report with the Board describing the complaint, the effort to achieve compliance, and the results of the effort.

(e) The filing of a complaint under subsection (a) of this section and action by a person acting for the Board under subsections (b), (c), and (d) of this section may not prevent or bar the Board from considering and acting on a written complaint filed in accordance with § 10-502.5 of this subtitle.

10-503. Scope of subtitle.

(a) Except as provided in subsection (b) of this section, this subtitle does not apply to:

(1) a public body when it is carrying out:

- (i) an executive function;
- (ii) a judicial function; or
- (iii) a quasi-judicial function; or

(2) a chance encounter, social gathering, or other occasion that is not intended to circumvent this subtitle.

(b) The provisions of this subtitle apply to a public body when it is meeting to consider:

- (1) granting a license or permit; or
- (2) a special exception, variance, conditional use, zoning classification, the enforcement of any zoning law or regulation, or any other zoning matter.

Text of the Open Meetings Act

10-504. Conflict of laws.

Whenever this subtitle and another law that relates to meetings of public bodies conflict, this subtitle applies unless the other law is more stringent.

10-505. Open sessions generally required.

Except as otherwise expressly provided in this subtitle, a public body shall meet in open session.

10-506. Notice of open session.

(a) Before meeting in a closed or open session, a public body shall give reasonable advance notice of the session.

(b) Whenever reasonable, a notice under this section shall:

- (1) be in writing;
- (2) include the date, time, and place of the session; and
- (3) if appropriate, include a statement that a part or all of a meeting may be conducted in closed session.

(c) A public body may give the notice under this section as follows:

- (1) if the public body is a unit of the State government, by publication in the Maryland Register;
- (2) by delivery to representatives of the news media who regularly report on sessions of the public body or the activities of the government of which the public body is a part;
- (3) if the public body previously has given public notice that this method will be used, by posting or depositing the notice at a convenient public location at or near the place of the session; or
- (4) by any other reasonable method.

Text of the Open Meetings Act

10-507. Attendance at open session.

(a) Whenever a public body meets in open session, the general public is entitled to attend.

(b) A public body shall adopt and enforce reasonable rules regarding the conduct of persons attending its meetings and the videotaping, televising, photographing, broadcasting, or recording of its meetings.

(c) (1) If the presiding officer determines that the behavior of an individual is disrupting an open session, the public body may have the individual removed.

(2) Unless the public body or its members or agents acted maliciously, the public body, members, and agents are not liable for having an individual removed under this subsection.

10-507.1. Interpreters.

(a) This section applies only to the Executive and Legislative Branches of State government.

(b) (1) On request and to the extent feasible, a unit that holds a public hearing shall provide a qualified interpreter to assist deaf persons to understand the proceeding.

(2) The request must be submitted in writing or by telecommunication at least 5 days before the proceeding begins.

(3) Whether providing an interpreter is feasible shall be determined, in each instance, by the unit involved.

10-508. Closed session permitted.

(a) Subject to the provisions of subsection (d) of this section, a public body may meet in closed session or adjourn an open session to a closed session only to:

(1) discuss:

Text of the Open Meetings Act

- (i) the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom it has jurisdiction; or
 - (ii) any other personnel matter that affects 1 or more specific individuals;
- (2) protect the privacy or reputation of individuals with respect to a matter that is not related to public business;
- (3) consider the acquisition of real property for a public purpose and matters directly related thereto;
- (4) consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State;
- (5) consider the investment of public funds;
- (6) consider the marketing of public securities;
- (7) consult with counsel to obtain legal advice;
- (8) consult with staff, consultants, or other individuals about pending or potential litigation;
- (9) conduct collective bargaining negotiations or consider matters that relate to the negotiations;
- (10) discuss public security, if the public body determines that public discussion would constitute a risk to the public or to public security, including:
 - (i) the deployment of fire and police services and staff; and
 - (ii) the development and implementation of emergency plans;
- (11) prepare, administer, or grade a scholastic, licensing, or qualifying examination;
- (12) conduct or discuss an investigative proceeding on actual or possible criminal conduct;
- (13) comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter; or
- (14) before a contract is awarded or bids are opened, discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.

Text of the Open Meetings Act

(b) A public body that meets in closed session under this section may not discuss or act on any matter not permitted under subsection (a) of this section.

(c) The exceptions in subsection (a) of this section shall be strictly construed in favor of open meetings of public bodies.

(d) (1) Unless a majority of the members of a public body present and voting vote in favor of closing the session, the public body may not meet in closed session.

(2) Before a public body meets in closed session, the presiding officer shall:

- (i) conduct a recorded vote on the closing of the session; and
- (ii) make a written statement of the reason for closing the meeting, including a citation of the authority under this section, and a listing of the topics to be discussed.

(3) If a person objects to the closing of a session, the public body shall send a copy of the written statement required under paragraph (2) of this subsection to the Board.

(4) The written statement shall be a matter of public record.

10-509. Minutes.

(a) This section does not:

- (1) require any change in the form or content of the Journal of the Senate of Maryland or Journal of the House of Delegates of Maryland; or
- (2) limit the matters that a public body may include in its minutes.

(b) As soon as practicable after a public body meets, it shall have written minutes of its session prepared.

(c) (1) The minutes shall reflect:

- (i) each item that the public body considered;
- (ii) the action that the public body took on each item; and
- (iii) each vote that was recorded.

(2) If a public body meets in closed session, the minutes for its next open session shall include:

- (i) a statement of the time, place, and purpose of the closed session;
- (ii) a record of the vote of each member as to closing the session;

Text of the Open Meetings Act

(iii) a citation of the authority under this subtitle for closing the session; and

(iv) a listing of the topics of discussion, persons present, and each action taken during the session.

(3) (i) A closed session may be tape recorded.

(ii) A public body shall provide for the preservation for 1 year of its minutes and any tape recording of its closed meetings.

(iii) Except as otherwise provided in paragraph (4) of this subsection, the minutes and any tape recording of a closed session shall be sealed and may not be open to public inspection.

(4) The minutes and any tape recording shall be unsealed and open to inspection as follows:

(i) for a meeting closed under § 10-508(a)(5), when the public body invests the funds;

(ii) for a meeting closed under § 10-508(a)(6), when the public securities being discussed have been marketed; or

(iii) on request of a person or on the public body's own initiative, if a majority of the members of the public body present and voting vote in favor of unsealing the minutes and any tape recording.

(d) Except as provided in subsection (c) of this section, minutes of a public body are public records and shall be open to public inspection during ordinary business hours.

10-510. Enforcement

(a) (1) This section does not apply to the action of:

(i) appropriating public funds;

(ii) levying a tax; or

(iii) providing for the issuance of bonds, notes, or other evidences of public obligation.

(2) This section does not authorize a court to void an action of a public body because of any violation of this subtitle by another public body.

(3) This section does not affect or prevent the use of any other available remedies.

Text of the Open Meetings Act

(b) (1) If a public body fails to comply with § 10-505, § 10-506, § 10-507, § 10-508, or § 10-509(c) of this subtitle and a person is affected adversely, the person may file with a circuit court that has venue a petition that asks the court to:

- (i) determine the applicability of those sections;
- (ii) require the public body to comply with those sections; or
- (iii) void the action of the public body.

(2) If a violation of § 10-506, § 10-508, or § 10-509(c) of this subtitle is alleged, the person shall file the petition within 45 days after the date of the alleged violation.

(3) If a violation of § 10-505 or § 10-507 of this subtitle is alleged, the person shall file the petition within 45 days after the public body includes in the minutes of an open session the information specified in § 10-509(c)(2) of this subtitle.

(4) If a written complaint is filed with the Board in accordance with § 10-502.5 of this subtitle, the time between the filing of the complaint and the mailing of the written opinion to the complainant and the affected public body under § 10-502.5(g) of this subtitle may not be included in determining if a claim against a public body is barred by the statute of limitations set forth in paragraphs (2) and (3) of this subsection.

(c) In an action under this section, it is presumed that the public body did not violate any provision of this subtitle, and the complainant has the burden of proving the violation.

(d) A court may:

(1) consolidate a proceeding under this section with another proceeding under this section or an appeal from the action of the public body;

(2) issue an injunction;

(3) determine the applicability of this subtitle to the discussions or decisions of public bodies;

(4) if the court finds that a public body willfully failed to comply with § 10-505, § 10-506, § 10-507, or § 10-509(c) of this subtitle and that no other remedy is adequate, declare void the final action of the public body;

(5) as part of its judgment:

(i) assess against any party reasonable counsel fees and other litigation expenses that the party who prevails in the action incurred; and

Text of the Open Meetings Act

- (ii) require a reasonable bond to ensure the payment of the assessment; and
 - (6) grant any other appropriate relief.
- (e) (1) A person may file a petition under this section without seeking an opinion from the State Open Meetings Law Compliance Board.
- (2) The failure of a person to file a complaint with the Board is not a ground for the court to either stay or dismiss a petition.

10-511. Penalty.

A member of a public body who willfully participates in a meeting of the body with knowledge that the meeting is being held in violation of the provisions of this subtitle is subject to a civil penalty not to exceed \$100.

10-512. Short title.

This subtitle may be cited as the “Open Meetings Act”.

Compliance Checklist

COMPLIANCE CHECKLIST

For *all meetings* covered by the Act, did you:

- A. Provide proper advance notice?
- B. Arrange for minutes to be taken?

For *closed meetings* covered by the Act, did you also:

- A. Record a majority vote in favor of closing the meeting?
 - B. Identify one or more of the following grounds for closing the meeting?*
- 1. a specific personnel matter;
 - 2. protection of personal privacy on a matter unrelated to public business;
 - 3. acquisition of real property;
 - 4. a proposed business relocation or expansion;
 - 5. the investment of public funds;
 - 6. the marketing of public securities;
 - 7. obtaining legal advice;

* These items are merely synopses of the exceptions. The actual text of an exception should be considered carefully before a meeting is closed on that basis.

Compliance Checklist

8. consulting about litigation;
 9. collective bargaining;
 10. public security;
 11. scholastic, licensing, or qualifying examinations;
 12. criminal investigations;
 13. other legal requirement; or
 14. preliminary discussion of procurement issues.
- C. Include in the record a written statement of the reasons and legal basis for closing the meeting and the topics to be discussed?
- D. Take minutes or tape record the closed meeting?
- E. Include in the minutes of the next open meeting a statement of the time, place, and purpose of the closed meeting; a record of the vote to close the meeting and the authority to do so; and a listing of the topics discussed, the persons present, and the actions taken?

Form of Statement for Closing a Meeting

FORM OF STATEMENT FOR CLOSING A MEETING

Location: _____

Date: _____

Time: _____

Motion By: _____ Seconded By: _____

Vote to Close Session:

	AYE	NAY	ABSTAIN	ABSENT
Name	☐	☐	☐	☐
Name	☐	☐	☐	☐
Name	☐	☐	☐	☐
Name	☐	☐	☐	☐

STATUTORY AUTHORITY TO CLOSE SESSION

State Government Article §10-508(a):

- (1) ☐ To discuss:
- (i) The appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom it has jurisdiction; or
 - ☐ (ii) Any other personnel matter that affects one or more specific individuals.
- (2) ☐ To protect the privacy or reputation of individuals with respect to a matter that is not related to public business.
- (3) ☐ To consider the acquisition of real property for a public purpose and matters directly related thereto.
- (4) ☐ To consider a preliminary matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State.

Form of Statement for Closing a Meeting

- (5) ☐ To consider the investment of public funds.
- (6) ☐ To consider the marketing of public services.
- (7) ☐ To consult with counsel to obtain legal advice on a legal matter.
- (8) ☐ To consult with staff, consultants, or other individuals about pending or potential litigation.
- (9) ☐ To conduct collective bargaining negotiations or consider matters that relate to the negotiations.
- (10) ☐ To discuss public security, if the public body determines that public discussions would constitute a risk to the public or public security, including:
 - (i) the deployment of fire and police services and staff; and
 - (ii) the development and implementation of emergency plans.
- (11) ☐ To prepare, administer or grade a scholastic, licensing, or qualifying examination.
- (12) ☐ To conduct or discuss an investigative proceeding on actual or possible criminal conduct.
- (13) ☐ To comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter.
- (14) ☐ Before a contract is awarded or bids are opened, discuss a matter directly related to a negotiation strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.

Form of Statement for Closing a Meeting

TOPICS TO BE DISCUSSED:

REASON FOR CLOSING:

Signature of Presiding Officer

MODEL REGULATIONS FOR OPEN MEETINGS

1.01. Public Attendance.

(a) At any open session of the [name of public body], the general public is invited to attend and observe.

(b) Except in instances when the [public body] expressly invites public testimony, questions, comments, or other forms of public participation, or when public participation is otherwise authorized by law, no member of the public attending an open session may participate in the session.

1.02. Disruptive Conduct.

(a) A person attending an open session of the [public body] may not engage in any conduct, including visual demonstrations such as the waving of placards, signs, or banners, that disrupts the session or that interferes with the right of members of the public to attend and observe the session.

(b)(1) The presiding officer may order any person who has persisted in conduct prohibited by subsection (a) of this section or who violates any other regulation concerning the conduct of the open session to be removed from the session and may request police assistance to restore order.

(2) The presiding officer may recess the session while order is restored.

1.03. Recording, Photographing, and Broadcasting of Open Session

(a) A member of the public, including any representative of the news media, may record discussions of the [public body] at an open session by means of a tape recorder or any other recording device if the device does not create an excessive noise that disturbs members of the [public body] or other persons attending the session.

(b) A member of the public, including any representative of the news media, may photograph or videotape the proceedings of the [public body] at an open session by means of any type of camera if the camera:

Model Regulations for Open Meetings

(1) Is operated without excessively bright artificial light that disturbs members of the [public body] or other persons attending the session; and

(2) Does not create an excessive noise that disturbs members of the [public body] or other persons attending the session.

(c) A representative of the news media may broadcast or televise the proceedings of the [public body] at an open session if the equipment used:

(1) Is operated without excessively bright artificial light that disturbs members of the [public body] or other persons attending the session; and

(2) Does not create an excessive noise that disturbs members of the [public body] or other persons attending the session.

(d) The presiding officer may restrict the movement of a person who is using a recording device, camera, or broadcasting or television equipment if such restriction is necessary to maintain the orderly conduct of the session.

1.04. Recording Not Part of Record.

A recording of an open session made by a member of the public, or any transcript derived from such a recording, may not be deemed a part of the record of any proceeding of the [public body].

Topical Index

TOPICAL INDEX

JULY 1, 1992) SEPTEMBER 15, 2000

CLOSED SESSION DECISIONS

The Act does not prohibit taking final action in closed session	
Vol. I 94-5	73

CLOSED SESSION PROCEDURES

General

Failure to meet procedural requirements violated act	00-6
--	------

Voting

Impromptu hallway meeting is subject to all procedural requirements for a closed session	
Vol. I 93-1	20

Vote at one meeting to close the next is impermissible	
Vol. I 94-5	73
Vol. I 95-8	133

Vote to close must occur in open session	
Vol. I 96-12	191
Vol. I 97-1	201
Vol. I 97-4	218
Vol. I 99-13	74

Vote must be taken immediately preceding closed session, not before or after	00-2
--	------

Written Statement

Topic to be discussed at closed session must be included in statement prior to closed session	
Vol. I 92-1	1

Topical Index

Oral discussion of basis for closing session, later recorded in minutes, does not satisfy requirement for written statement prior to closed session	
Vol. I 92-4	13
Vol. I 92-5	16
Written statement may preserve confidential information justifying closed session	
Vol. I 92-5	16
Vol. I 93-2	23
Vol. I 97-10	242
“Reason” for closing session, to be included in written statement, must go beyond uninformative boilerplate	
Vol. I 93-2	23
Vol. I 96-12	191
Vol. I 97-10	242
Vol. I 97-11	245
Written statement prior to closed session need not identify anticipated participants in closed session	
Vol. I 93-9	47
Failure to hold open vote and to prepare written statement prior to closed meeting violated act	
Vol. I 97-5	220
Exception that is not cited by public body in written statement prior to closed session may not be asserted subsequently as justification for closing the session	
Vol. I 93-11	53
Vol. I 94-5	73
Vol. I 94-7	96
Written statement must be prepared immediately preceding closed session, not before or after	00-2
Failure to prepare written statement violated act	00-3

Topical Index

COMPLIANCE BOARD) AUTHORITY AND PROCEDURES

Compliance Board is not able to resolve disputed issues of fact	
Vol. I 94-1	56
Vol. I 94-8	101
Vol. II 99-4	43
Vol. II 99-13	74
Vol. II 99-16	80
Compliance Board has no enforcement authority	
Vol. I 95-2	113
Vol. I 97-1	201
Compliance Board cannot address allegations of impropriety apart from alleged violations of the open meetings Act or comment on compliance with other legal requirements	
Vol. II 98-1	1
Vol. II 98-6	21
Vol. II 98-9	31
Vol. II 99-6	49
Compliance Board has no jurisdiction over complaint that a member of a town council disclosed information about closed session	
Vol. II 99-14	77
Compliance Board cannot resolve substance of complaint when public body failed to respond	00-1
Public body's failure to respond violated act.	00-1

EXCEPTIONS PERMITTING CLOSED SESSIONS

Business Relocation

Proposal by business entity to move from one site to another within the state falls within exception for business relocation discussion, §10-508(a)(4)	
Vol. I 93-3	28
Vol. II 99-16	80

Topical Index

Consideration of public university's relocated facility does not fall within exception	
Vol. II 99-8	56

Examinations

Discussion of electrician's examination, as part of process for obtaining a certificate of registration, falls within exception for certain examinations, §10-508(a)(11), including licensing examinations	
Vol. I 92-4	13

Legal Advice

Advice from town attorney on individual compliance with ethics law falls within exception for advice from counsel, §10-508(a)(7)	
Vol. I 92-1	1

Exception permits participation in closed session by non-lawyer who supplies information pertinent to counsel's formulation of legal advice	
Vol. I 92-1	1

Discussion is not permitted on topics beyond the rendering of legal advice	00-5
Vol. I 92-1	1
Vol. I 93-11	53
Vol. I 95-2	113
Vol. I 95-11	145
Vol. I 96-6	169
Vol. I 97-1	201

Exception may not be invoked to hear report from non-lawyer about counsel's advice; counsel must be present	
Vol. I 93-6	35
Vol. I 94-5	73
Vol. I 94-7	96
Vol. I 95-2	113

Topical Index

Exception does not apply merely because topic of discussion has legal ramifications	
Vol. I 93-11	53
Exception does not extend to policy deliberation or any other aspect of legislative process	
Vol. I 95-11	145
Exception applies even if advice effectively determines public body's decisions	
Vol. I 96-6	169
Vol. I 96-7	172
Exception applies to zoning board's discussion with counsel about hearing requirements in a controversial matter	
Vol. I 97-6	224

Litigation

"Potential litigation" must be a concrete possibility for litigation exception, §10-508(a)(8), to be invoked	
Vol. I 93-7	38
Vol. I 97-9	237
Exception applies to discussion about pending or potential litigation, including settlement options, whether public body would be plaintiff or defendant	
Vol. I 94-1	56
Exception does not apply to discussion of underlying policy issue not directly related to litigation	
Vol. 94-1	56
Exception may be invoked even if counsel is not present	
Vol. I 94-5	73
Exception applies to zoning board's discussion with counsel about hearing requirements in a controversial matter	
Vol. I 97-6	224

Topical Index

Other Law

Public body may invoke “other law” exception, §10-508(a)(13), to avert disclosure of document subject to attorney-client privilege	
Vol. I 94-5	73

Personnel

Within the exception for specific personnel matters, §10-508(a)(1)) discussion of:

Town manager’s job description and employment status	
Vol. I 92-1	1
Status of specific county employees in the event of transfer to city’s jurisdiction	
Vol. I 93-11	53
Need for specific employee to obtain a license	
Vol. I 94-5	73
Raises and promotions for specific employees	
Vol. I 94-5	73
Creation of new position linked to a specific employee	
Vol. I 94-5	73
Hiring of specific individual	
Vol. I 94-5	73
School superintendent’s change of duties	
Vol. I 95-5	123
Town manager’s performance of particular job responsibility	
Vol. II 99-4	43

Outside the exception) discussion of:

Fringe benefits for a class of employees	
Vol. I 94-5	73

Topical Index

Pay adjustment policy	
Vol. I 94-5	73
Policy on renewal of employees' contracts	
Vol. I 94-5	73
Attendance at a reception and meeting	
Vol. I 94-5	73
Procurement of call forwarding service for an employee	
Vol. I 94-5	73
Reserving spaces at police academy	
Vol. I 94-5	73
Liquor service at an official dinner	
Vol. I 94-5	73
Policy issues related to merging two purchasing departments	
Vol. I 97-15	255
Policy issues related to a town newsletter	
Vol. II 99-4	43

Procurement

Discussion of strategy for project to be put out to bid falls within procurement exception, §10-508(a)(14)	
Vol. I 94-5	73
Exception applies only to discussion that concerns competitive bidding or proposals, not negotiation strategy in other contexts	
Vol. I 97-8	233

Property Acquisition

Discussion of sale of vehicles and acquisition of new ones does not fall within property acquisition exception, §10-508(a)(3)	
Vol. I 94-5	73

Topical Index

Exception applies only if public body has power to acquire property under discussion Vol. I 97-8	233
Discussion of possible acquisition of a portion of property for public parking falls within exception Vol. II 99-16	80

Public Security

Discussion of procedures for handling petty cash does not fall within the public security exception, §10-508(a)(10) Vol. I 94-5	73
--	----

EXECUTIVE FUNCTION

The following were held to fall within the “executive function” exclusion, §10-503(a)(1)(i):

Meeting conducted by county commissioners with board of non-profit hospital, when commissioners have oversight responsibility over hospital Vol. I 92-2	6
Work session of municipal planning commission Vol. I 92-3	10
Discussion of complaint against electrician by regulatory board Vol. I 92-4	13
Discussion by county commissioners in code home rule county of effect of cuts in state aid to counties Vol. I 93-2	23
Discussion by county commissioners confined to matters of budgetary administration and not involving proposal to amend budget Vol. I 93-2	23
Hearing by municipal ethics commission on complaint of alleged ethics violation Vol. I 93-4	30

Topical Index

Evaluation by school board of school superintendent's performance Vol. I 95-5	123
Appointment by school board of interim superintendent Vol. I 95-5	123
Consideration of remedies in enforcing a loan agreement Vol. I 95-7	129
Discussion of press release about a controversial city event Vol. I 95-8	133
Dismissal of employee Vol. I 96-5	166
Administration of existing leave policy Vol. I 96-5	166
Choice of newspaper for legal advertising Vol. I 96-13	195
Procedure to regulate public comments by members of a public body Vol. I 97-8	233
Appointment by town council to fill council vacancy Vol. I 97-14	252
Merging of county and city purchasing departments under current law Vol. I 97-15	255
Preliminary budget discussions between department heads and Wicomico County Council Vol. I 97-16	261
City council oversight of election board performance Vol. II 98-1	1

Topical Index

Solicitation of advice from colleagues by town council member who had certain administrative responsibilities Vol. II 98-6	21
City council's exercise of supervisory authority over town manager's preparation of compensation and benefit plans Vol. II 98-7	24
Appointment by county commissioners to fill planning commission vacancy Vol. II 99-5	45
City council's meeting with city administrator to consider future budget options Vol. II 99-10	64
Discussion concerning proposed development on border of municipality	00-4
Discussion of relationship between existing sewer connection ordinance and 1989 sewer maintenance agreement with landowner, held to fall within the exclusion	00-7
<u>The following were held to be outside the exclusion:</u>	
Discussion by special tax district board of potential petition drive Vol. I 94-7	96
Discussion of attendees' desire to address public body Vol. I 95-2	113
Discussion of a contract amendment Vol. I 95-5	123
Changes in law to achieve merger of county and city purchasing departments Vol. I 97-15	255
Discussion of developer's proposal to buy property and convert it to low-income housing Vol. II 99-16	80

Topical Index

LEGISLATIVE FUNCTION

Entire process by which city council considers ordinance, including briefing about the ordinance, falls within legislative function and therefore is subject to the Act	
Vol. I 93-6	35
Making an appointment, rather than approval of a proposed appointment, falls outside legislative function	
Vol. I 95-5	123

LICENSING MATTERS

Regulatory body's conduct of occupational licensing examination, even if within executive function, nevertheless subject to Act as part of the process of granting a license	
Vol. I 92-4	13

“MEETING”

Factors to be considered:

When quorum of public body attends meeting of an entity that is not a public body, applicability of Act depends on whether public body is itself considering public business	
Vol. I 92-2	6
Vol. I 94-9	104
Vol. I 95-4	120
Vol. I 95-10	142
Vol. I 96-3	157
Vol. I 96-10	183
Vol. II 98-8	27

Determined to be a meeting:

Information-gathering at the earliest stages of policy formulation	
Vol. I 93-2	23
Vol. I 93-6	35
Vol. I 95-7	129
Vol. I 97-2	206

Topical Index

Opportunity for a public body's quorum to explore issues as a group and exchange comments and reactions	
Vol. II 98-2	5

Convening of "accidental quorum" to hear briefing about budget process	00-8
--	------

Determined not to be a meeting:

Informal gathering before a meeting or during a break, so long as no discussion occurs about meeting topics	
Vol. I 94-6	92
Vol. I 95-6	127
Vol. I 96-3	157

Discussions among members of a public body if no quorum is present	
Vol. I 94-8	101
Vol. I 94-10	107
Vol. I 95-10	142
Vol. I 96-1	151
Vol. I 97-4	218
Vol. I 97-12	248
Vol. I 97-13	250
Vol. II 99-5	45
Vol. II 99-6	49

Conversation among quorum limited to personal information or social "small talk"	
Vol. I 95-7	129
Vol. II 99-5	45

Social event with general topical presentation	
Vol. I 97-7	227

Social event at which public business is mentioned only briefly and in passing and is not discussed	
Vol. II 98-2	5
Vol. II 99-13	74
Vol. II 99-16	80

Topical Index

Canvass of members by e-mail	
Vol. II 99-15	78

MINUTES

Closed Session Statement

Level of detail in statement need not compromise goals of confidentiality that led to session being closed in the first place	
Vol. I 92-5	16
Vol. I 94-5	73
Vol. I 95-1	110

While “topics of discussion” disclosed in minutes of next open session would ordinarily be the same as “topics to be discussed” in written statement prior to closed session, nothing in the Act prevents a public body from discussing less than it anticipated	
Vol. I 93-9	47

Statement that fails to cite authority for closing a session or to list the topic of discussion and the persons present violates the Act	
Vol. I 94-2	63

Minutes that do not contain information required by §10-509(c)(2) violate Act	
Vol. I 94-3	67

Statement need not reveal identity of business considering relocation	
Vol. II 99-9	60

Contents

Minutes must reflect item of business conducted	
Vol. I 94-2	63

Minutes must reflect specific statutory authority for closing a session	
Vol. I 94-5	73

Topical Index

Minutes summarizing topics discussed and actions taken at closed session need not disclose confidential information, but language that gives the public no information about topics discussed is insufficient	
Vol. I 95-1	110
Vol. II 98-5	18
Minutes must reflect any dissenting votes	
Vol. I 96-2	155
Disclosure of transcript satisfies minutes requirement	
Vol. I 96-4	162
Disclosure of tape recording does not satisfy minutes requirement	
Vol. II 99-18	87
Vol. II 99-19	92
Failure to prepare written minutes violated Act	00-3

Procedure

Act does not prescribe precise method by which minutes are prepared or amended	
Vol. I 94-2	63
Act allows closed session minutes to be prepared by the time of the public body's next regularly scheduled meeting	
Vol. I 95-3	117
Act allows a public body a reasonable amount of time to review draft minutes for accuracy and to approve them	
Vol. II 98-3	11
Vol. II 99-18	87
Public is not entitled to inspect draft, unapproved minutes	
Vol. II 98-3	11
Act does not prevent a public body from disclosing minutes of a meeting closed to discuss a specific personnel matter, but sound practice suggests that affected employee be given opportunity to object	
Vol. II 98-4	16

Topical Index

Minutes must be prepared within a reasonable time Vol. II 99-18	87
Relatively brief delays in preparing minutes, attributable to staffing constraints, do not violate Act. Vol. II 99-19	92

NOTICE REQUIREMENTS

Content

Notice need not describe particular agenda items that are expected to be discussed at meeting Vol. I 92-5	16
Vol. I 94-4	69
Vol. I 95-1	110
Vol. II 98-9	31
Vol. II 99-7	52
One-time publication of schedule of anticipated meeting times, if coupled with posted notice of each meeting, complies with the Act Vol. I 94-4	69
Prince George's county council need not differentiate its role as district council in announcing time of meeting Vol. II 98-9	31

Method

If public is told of the practice, notice through posting in a single location complies with the Act Vol. I 92-3	10
Vol. I 93-4	30
Vol. II 98-5	18
Vol. II 99-17	84
Announcement of future meeting at open meeting attended by press is a "reasonable method" of public notice Vol. I 93-5	33

Topical Index

Public body is accountable for staff's clerical error resulting in failure to post notice	
Vol. I 93-8	44
Notice via cable television is lawful if public is informed and if a written version is available	
Vol. I 96-5	166
Public must be notified of canceled meeting	
Vol. I 96-11	186
Notice to reporters is optional if another means of notice has been provided	
Vol. I 97-9	237
Notice via state agency's press release substantially complied with Act	
Vol. II 98-8	27

Timing

Scheduling of meeting on short notice requires best public notice feasible under the circumstances	
Vol. I 93-7	38
Vol. II 98-3	11
Vol. II 99-3	39
Prompt scheduling of meeting does not excuse failure to provide notice	
Vol. I 96-10	183
Notice of Wednesday meeting posted on preceding Friday is reasonable	
Vol. II 98-5	18
Same-day notice of urgently called meeting lawful	
Vol. I 96-11	186
Vol. I 97-9	237
Public must be informed when time of meeting is changed	
Vol. II 99-7	52

Topical Index

OPEN SESSION REQUIREMENT

Act does not regulate the manner in which a public body makes decisions at an open session	
Vol. I 92-5	16
Session of county council held without notice and in an unusual meeting place violated open session requirement, even if a member of the public who happened upon the session would have been admitted	
Vol. I 93-8	44
If a matter is required to be discussed in open session, every aspect of the discussion, from beginning to end, must be in open session	
Vol. I 94-5	73
Vol. I 96-4	162
Open meeting must be conducted in a manner that, as a practical matter, does not exclude public	
Vol. I 94-6	92
Vol. I 96-4	162
Act is not violated if public body immediately recognizes that newly raised topic may not be discussed in closed session and does not discuss topic further	
Vol. I 95-3	117
County council's brief delay in permitting access by camera crew did not violate Act	
Vol. I 96-8	175
Public body may not prohibit videotaping of audience at meeting	
Vol. I 95-9	137
Open meeting in a conference room after closed session was permissible	
Vol. I 97-6	224

Topical Index

Public body violates Act by conducting discussion after announcing adjournment of open session	
Vol. I 96-4	162
Vol. I 96-9	178
Public has no entitlement under Act to comment on public body's decisions	
Vol. I 97-7	227
People with disabilities must be accommodated at meeting, but meeting need not be held in barrier-free facility	
Vol. I 97-9	237
Vol. I 97-11	245
Public has no entitlement under Act to be given access to document distributed to members at meeting	
Vol. II 99-15	78
Reporters may not be excluded from meeting open to the public	
Vol. II 99-11	67

PUBLIC BODY

Factors to Be Considered:

Receipt of public funds is irrelevant to public body status	
Vol. I 96-11	186
Vol. I 97-3	212
Meeting of county department heads and Wicomico County Council is equivalent to Governor's Cabinet and not subject to Act	
Vol. I 97-16	261

Determined to be a public body:

Committees comprising town residents appointed by resolution of city council	
Vol. I 94-4	69

Topical Index

Board of legislatively created corporation, intended by the General Assembly to be a governmental entity Vol. I 97-3	212
--	-----

Determined Not to Be a Public Body:

Board of directors of a private, non-profit hospital Vol. I 92-2	6
---	---

City, county, or school board staff members Vol. I 92-2	6
Vol. II 98-8	27
Vol. II 99-2	37

Municipal officials and individual members of city council Vol. I 93-6	35
---	----

County department heads and county commissioners in a county in which commissioners are executive head of county government	00-7
Vol. I 93-10	50

Private, voluntary association of public officials and others Vol. I 95-4	120
--	-----

Subcommittees not formally created Vol. I 94-4	69
Vol. II 99-12	70

Individual hearing examines holding hearing on behalf of zoning board Vol. I 96-8	175
---	-----

Private corporation's board of directors, albeit appointed by the mayor Vol. I 96-14	197
--	-----

Informally created committee consisting of two jurisdictions' officials Vol. II 98-2	5
--	---

Topical Index

Student government association at public college	
Vol. II 99-1	35

QUASI-JUDICIAL FUNCTION

If, under municipal charter, city council has appellate role in dispute over referendum petition, activity is a quasi-judicial function excluded from the Act	
Vol. II 98-1	1

QUASI-LEGISLATIVE FUNCTION

Budget review by county legislative body, including earliest stages of information-gathering, is a quasi-legislative function subject to the Act	
Vol. I 93-8	44
Vol. I 97-2	206
Amendment of employment contract is a quasi-legislative function	
Vol. I 95-5	123
Review of staff's proposed budget by library board committee is a quasi-legislative function	
Vol. I 97-7	227

SCOPE OF ACT

Activity by public body that falls within none of the defined functions is covered by the Act	
Vol. I 94-7	96
Vol. I 94-10	107
Vol. I 95-2	113
Individual actions of presiding officer not covered by the Act	
Vol. II 99-12	70

Topical Index

ZONING MATTERS

Zoning does not include planning for purposes of the Act	
Vol. I 92-3	10

CITATOR

July 1, 1992 through August 31, 2000

Section	Vol.	Opinion No.	Page No.
----------------	-------------	--------------------	-----------------

10-501. Legislative Policy

10-501(a)(1)	I	95-5	125
10-501(a)(2)	II	99-11	68
	I	97-7	227
10-501(a)(2)(ii)	I	95-11	148
10-501(a)(3)(i)	I	97-2	207
10-501(b)	I	97-7	227
	I	94-1	61
10-501(b)(1)	II	99-11	68
	II	99-5	46
	I	95-9	140
10-501(b)((2)(ii)	I	97-2	207
10-501(c)	I	97-9	239

10-502. Definitions

10-502	I	95-5	124
	I	93-2	26
10-502(a)(1)(i)	I	97-3	216

Citator

Section	Vol.	Opinion No.	Page No.
10-502(b)	II	98-2	9
	I	95-8	135
	I	95-7	132
	I	95-2	115
	I	94-7	97
10-502(d)		00-7	3
	I	97-5	222
	I	96-3	158
	I	92-1	4
10-502(d)(1)	I	95-8	135
	I	95-5	124
	I	95-2	115
	I	94-7	98
	I	93-4	30
	I	93-2	24
10-502(d)(1)(ii)		00-5	4
	II	99-16	82
	II	99-10	65
	II	98-7	25
	II	98-1	3
	I	97-15	257
	I	96-5	167
	I	92-3	11
10-502(d)(2)		00-8	6
		00-5	4
	II	99-16	82
	II	99-10	65
	II	98-7	24
	II	98-6	23
	II	97-14	253
	I	97-7	229
	I	96-13	196
	I	96-5	167

Citator

Section	Vol.	Opinion No.	Page No.
10-502(d)(2) (Cont'd.)	I	95-8	135
	I	95-7	131
	I	95-5	124
	I	95-2	115
	I	94-7	98
10-502(e)	I	95-8	135
	I	95-7	132
	I	95-2	115
	I	94-7	97
10-502(f)	II	98-2	9
	II	98-1	2
	I	97-15	257
	I	97-14	253
	I	95-8	135
	I	95-7	132
	I	95-2	115
	I	94-8	101
	I	94-7	97
	I	93-1	21
10-502(f)(1)	I	96-3	159
	I	95-11	148
	I	93-6	36
10-502(f)(2)	I	97-15	257
	I	97-14	253
	I	95-5	125
10-502(g)		00-8	5
	II	99-13	75
	II	99-10	65
	II	99-5	46, 47
	II	98-8	28
	II	98-7	24
	II	98-6	22

Citator

Section	Vol.	Opinion No.	Page No.
10-502(g) (Cont'd.)	II	98-2	6
	I	97-13	250
	I	97-12	248
	I	97-4	218
	I	97-2	208
	I	96-10	184
	I	96-5	166
	I	96-3	157
	I	96-1	153
	I	95-7	131
	I	95-6	128
	I	95-5	123
	I	95-4	121
	I	95-2	114
	I	94-10	107
	I	94-9	105
	I	94-8	102
	I	94-6	94
	I	93-6	36
	I	93-2	26
	I	93-1	21
	I	92-4	13
	I	92-2	7
10-502(h)	II	99-12	72
	II	99-10	65
	II	99-2	38
	II	99-1	35
	II	98-8	27
	II	98-7	24
	II	98-2	9
	I	96-10	185
	I	96-8	176
	I	96-5	166
	I	95-4	120
	I	94-9	105
	I	94-7	96

Citator

Section	Vol.	Opinion No.	Page No.
10-502(h) (Cont'd.)	I	93-6	36
	I	92-4	13
	I	92-2	6
10-502(h)(1)	II	98-2	9
	I	97-7	228
	I	97-3	213
	I	95-10	142
	I	95-2	114
	I	93-10	50
	I	93-4	31
	I	92-2	8
10-502(h)(1)(i)		00-8	4
	I	95-10	142
10-502(h)(1)(ii)	I	97-16	261
	I	96-14	197, 198
10-502(h)(1)(ii)5	II	99-1	36
	I	97-7	228
	I	94-4	70
10-502(h)(2)	II	98-2	9
	I	97-3	213
	I	96-14	198, 199, 200
	I	92-2	8
10-502(h)(3)(i)		00-8	4
	I	96-8	176
	I	96-3	160
10-502(h)(3)(viii)		00-7	2
	I	95-10	142
	I	93-10	50

Citator

Section	Vol.	Opinion No.	Page No.
10-502(i)	II	98-1	2
	I	95-8	135
	I	95-7	132
	I	95-2	115
	I	94-7	97
	I	93-4	31
10-502(j)		00-8	6
		00-7	3
		00-6	2
	II	99-10	66
	II	98-1	2
	I	96-13	196
	I	95-8	135
	I	95-7	132
	I	95-2	115
	I	94-7	97
10-502(j)(2)	I	97-16	262
	I	97-7	229
	I	97-2	209
	I	93-8	45
	I	93-2	24
	I	92-2	8
10-502(j)(3)		00-7	3
	II	99-16	82
	II	98-6	23
	I	95-5	124
10-502(k)	II	99-6	50
	II	99-5	46

Citator

Section	Vol.	Opinion No.	Page No.
----------------	-------------	--------------------	-----------------

10-502(k)(1)	II	99-6	50
	I	97-13	250
	I	97-2	208
	I	96-1	153
	I	94-10	107

10-502.1 through 10-502.6. Compliance Board

10-502.4	I	97-1	205
10-502.4(a)	II	99-1	35
10-502.5	II	99-1	35
10-502.5(a)	I	96-7	172
10-502.5(b)(2)		00-1	3
	II	99-14	77
10-502.5(c)(1)	II	99-14	77
10-502.5(c)(2)		00-8	2
		00-1	1
	II	99-14	77
10-502.5(c)(3)		00-1	3
10-502.5(d)	I	96-9	181
10-502(d)(1)		00-3	5
10-502.5(d)(2)		00-8	6
	I	96-9	178, 181
	I	92-1	1

Citator

Section	Vol.	Opinion No.	Page No.
----------------	-------------	--------------------	-----------------

10-502.5(f)(2)	I	97-15	256
	I	96-9	181
	I	94-5	76
	I	94-1	58
	I	93-7	39
10-502.5(g)	II	99-14	77
10-502(i)		00-5	8
10-502.5(i)(1)	I	95-2	116
10-502.5(i)(2)	I	95-2	116
10-502.5(j)	I	97-1	205

10-503. Scope

10-503	II	99-5	47
	II	99-2	38
	II	98-2	9
	I	97-5	222
	I	94-7	98
10-503(a)	I	95-2	114
10-503(a)(1)	I	97-6	225
	I	97-1	203
	I	92-4	14
10-503(a)(1)(i)		00-5	4
		00-4	2
		00-3	5
	II	99-16	81
	II	99-10	65
	II	98-7	24

Citator

Section	Vol.	Opinion No.	Page No.
10-503(a)(1)(i) (Cont'd.)	II	98-6	23
	II	98-1	2
	I	97-16	261
	I	97-14	252
	I	97-8	236
	I	97-7	228
	I	97-2	209
	I	96-13	196
	I	96-5	166
	I	96-3	158
	I	95-8	135
	I	95-7	131
	I	95-5	123
	I	95-2	114
	I	94-9	106
	I	94-7	97
	I	94-5	86
	I	93-4	30
	I	93-2	24
	I	92-3	11
10-503(a)(1)(iii)	II	98-1	2
10-503(a)(2)	II	99-13	76
	II	99-5	47
	II	98-2	7
	I	97-7	231
	I	97-2	208
	I	96-3	157
	I	95-7	131
	I	95-6	128
	I	95-4	122
	I	94-6	94
10-503(b)	II	98-1	2

Citator

Section	Vol.	Opinion No.	Page No.
10-503(b)(1)	I	92-4	14
	I	92-3	11
10-503(b)(2)	I	97-6	225
	I	97-1	203
	I	96-4	164
	I	92-3	11
 10-504. Conflict of Laws			
10-504		94-7	98
 10.505. Open Meetings Requirement			
10-505	II	99-11	68
	II	99-2	38
	II	98-8	27
	I	97-15	259
	I	97-3	213
	I	96-14	197
	I	96-10	185
	I	96-9	181
	I	96-4	165
	I	96-3	157
	I	96-1	153
	I	95-2	114
	I	94-10	107
	I	94-9	105
	I	94-7	98
	I	94-1	58
	I	93-8	45
	I	93-7	40, 42
	I	93-6	36
	I	93-3	28

10.506. Notice Requirement

10-506		00-3	3
	II	99-7	54
	II	99-3	40
	II	98-9	32
	II	98-3	14
	I	96-11	188
	I	96-10	185
	I	96-5	167
	I	94-10	107
	I	92-3	11
10-506(a)	II	99-17	84
	II	99-3	40
	II	98-8	29
	II	98-5	18
	I	97-9	238
	I	96-12	192
	I	96-5	167
	I	94-4	70, 71
	I	94-1	57
	I	93-8	45
	I	93-7	39
	I	93-2	25
10-506(b)	II	98-5	18
	I	94-4	70
	I	92-5	18
10-506(b)(1)	I	96-5	167

Citator

Section	Vol.	Opinion No.	Page No.
10-506(b)(2)	I	96-11	188
	I	96-5	167
	I	95-1	110
	I	94-4	71
	I	94-1	57
	I	93-7	39
10-506(b)(3)		00-3	3
	I	97-11	246
	I	96-12	192
	I	96-11	188
	I	96-5	167
	I	94-1	57
	I	93-7	39
	I	93-2	25
10-506(c)	I	93-5	33, 34
10-506(c)(1)	II	99-6	49
10-506(c)(2)	II	99-3	41
	II	98-8	29
	I	97-9	238
	I	96-11	188, 190
	I	96-5	168
10-506(c)(3)	II	99-3	41
	II	98-5	19
	I	97-9	238
	I	96-11	188
	I	96-5	168
	I	94-4	71
	I	93-4	32

Citator

Section	Vol.	Opinion No.	Page No.
----------------	-------------	--------------------	-----------------

10-506(c)(4)	II	99-17	84
	II	99-3	41
	II	98-5	19
	I	96-11	188
	I	96-5	168
	I	94-4	70

10.507. Attendance at Open Meetings

10-507	I	94-10	107
10-507(a)	II	99-11	68
	I	97-7	227
	I	93-3	28
10-507(b)	I	96-8	176
	I	95-9	139, 140
10-507(b)(1)	I	95-9	140

10.508. Closed Meetings Permitted

10-508		00-5	3
		00-2	3
		00-1	1
	II	98-4	16
	I	97-7	232
	I	97-5	221, 222
	I	97-3	217
	I	93-2	25
10-508(a)	I	97-15	257
	I	97-2	210
	I	96-4	164
	I	95-2	115

Citator

Section	Vol.	Opinion No.	Page No.
10-508(a) (Cont'd.)	I	93-11	55
	I	93-9	48
	I	93-1	21
	I	92-4	14
	I	92-2	8
10-508(a)(1)		00-6	1
		00-5	5
		00-3	3
		00-2	3
	II	99-13	75
	II	99-9	62
	II	99-4	43
	II	98-7	24
	I	97-15	255, 258
	I	97-8	236
	I	96-11	188
	I	95-5	125
	I	94-5	75, 76, 78
	I	94-2	63
	I	93-11	54
10-508(a)(1)(i)	II	98-4	16
	I	97-10	242
10-508(a)(1)(ii)	I	92-1	4
10-508(a)(2)		00-5	3, 5
	I	95-7	130
10-508(a)(3)	II	99-16	81, 82
	I	97-11	246
	I	97-8	233
	I	97-7	232
	I	95-1	112

Citator

Section	Vol.	Opinion No.	Page No.
10-508(a)(3) (Cont'd.)	I	94-5	77, 88
	I	93-11	54
	I	93-9	47
10-508(a)(4)		00-4	2
	II	99-16	81, 82
	II	99-9	60, 62
	II	99-8	57, 59
	I	97-5	221
	I	94-5	88
	I	93-3	28, 29
10-508(a)(7)		00-5	3, 5, 6
		00-4	3
		00-2	3
	II	99-4	43
	I	97-10	242
	I	97-9	240
	I	97-6	225
	I	97-1	202
	I	96-7	173
	I	96-6	170
	I	95-11	149
	I	95-3	118
	I	95-2	115
	I	94-8	102
	I	94-7	98
	I	94-5	74, 75, 77, 81
	I	94-3	67
	I	93-11	54
	I	93-6	37
	I	92-5	17
	I	92-1	2, 3, 4, 5

Citator

Section	Vol.	Opinion No.	Page No.
10-508(a)(8)		00-5	3, 5
	II	99-4	43
	I	97-10	242, 243
	I	97-9	240
	I	97-6	225
	I	97-1	203
	I	94-8	103
	I	94-5	74, 75, 85
	I	94-3	67
	I	94-1	58, 60
	I	93-11	54
	I	93-7	40, 41, 42
	I	92-5	17
10-508(a)(9)		00-5	3
10-508(a)(10)	I	94-9	106
	I	94-5	76
10-508(a)(11)	I	92-4	14
10-508(a)(13)	I	94-7	99
10-508(a)(14)		00-6	2
		00-5	5
	I	97-8	233, 234
	I	94-5	81, 84, 85, 90
	I	93-9	47
10-508(c)		00-5	7
	II	99-8	59
	I	97-15	258
	I	97-9	240
	I	97-8	234
	I	94-5	76

Citator

Section	Vol.	Opinion No.	Page No.
10-508(c) (Cont'd.)	I	94-1	60
	I	93-7	41
	I	93-6	37
10-508(d)	I	97-15	259
	I	97-6	225
	I	95-7	129
	I	95-5	125
	I	94-1	61
	I	93-7	43
	I	93-2	25
10-508(d)(1)		00-2	3
	I	95-3	118
	I	95-2	116
	I	94-5	83, 86
	I	93-1	21
10-508(d)(2)		00-5	3
	II	99-16	82
	II	98-5	19, 20
	I	97-10	243, 244
	I	97-7	232
	I	97-5	221
	I	96-12	194
	I	95-1	111
	I	94-1	61
	I	93-11	54
	I	93-7	43
	I	93-2	26
10-508(d)(2)(i)		00-2	3
	I	97-1	204
	I	96-12	193
	I	95-3	118
	I	95-2	116

Citator

Section	Vol.	Opinion No.	Page No.
10-508(d)(2)(i) (Cont'd.)	I	95-1	111
	I	93-1	21
10-508(d)(2)(ii)		00-4	4
		00-2	3
	II	99-16	83
	I	97-11	247
	I	97-1	204
	I	96-12	193
	I	96-7	174
	I	95-3	118
	I	95-2	116
	I	95-1	111
	I	94-7	99
	I	94-4	70
	I	93-9	48
	I	93-2	25
	I	93-1	21
	I	92-5	17
	I	92-4	14, 15
	I	92-1	2, 3
10-508(d)(3)		00-2	3
	I	96-12	193
	I	95-2	116
	I	92-4	15
10-508(d)(4)		00-2	3
10.509. Minutes			
10-509	II	99-18	87, 90
	I	94-2	64
10-509(a)(2)	I	94-2	64

Citator

Section	Vol.	Opinion No.	Page No.
10-509(b)		00-3	4
	II	99-19	93, 90
	II	99-18	87, 88, 89
	II	98-4	16
	II	98-3	12
	I	96-12	194
	I	95-3	119
	I	94-7	100
	I	94-2	64
	I	93-1	21
10-509(c)		00-3	4
	II	99-18	90
	I	96-4	165
	I	95-5	125
	I	94-2	64
	I	93-1	21
10-509(c)(1)	II	98-3	12
	I	96-12	194
	I	96-2	155
	I	94-2	64
10-509(c)(1)(iii)	I	96-2	155
10-509(c)(2)		00-3	5
	II	99-9	60, 61
	II	98-5	19, 20
	I	97-15	260
	I	97-5	222
	I	97-1	204
	I	95-7	129
	I	94-7	100
	I	94-5	73
	I	94-4	70
	I	94-3	67, 68
	I	94-2	65, 66

Citator

Section	Vol.	Opinion No.	Page No.
10-509(c)(2) (Cont'd.)	I	94-1	61, 62
	I	93-9	48
	I	93-7	43
	I	93-3	28
	I	93-1	21
	I	92-5	17
10-509(c)(2)(iii)	I	94-5	74, 78
	I	93-11	54
10-509(c)(2)(iv)	II	98-5	20
	I	95-1	112
	I	94-5	74, 79
10-509(c)(3)	II	98-3	13
10-509(c)(3)(i)	I	96-12	194
10-509(c)(3)(ii)	I	94-2	64
10-509(c)(3)(iii)		00-5	8
		00-3	4
	II	98-4	16
	I	97-15	260
	I	95-3	119
10-509(c)(4)		00-3	4
10-509(c)(4)(iii)	II	98-4	16
	I	95-3	119
10-509(d)	II	99-19	93
	II	99-18	89
	II	98-4	16
	II	98-3	13
	I	97-15	260

Citator

Section	Vol.	Opinion No.	Page No.
----------------	-------------	--------------------	-----------------

10.510. Court Enforcement

10-510		00-6	3
		00-1	3
10-510(a)(1)(i)	I	97-7	229
10-510(b)		00-8	3
	I	96-9	180
10-510(c)		00-8	3, 4
	I	96-9	179, 180, 181

10.511. Civil Penalty

10-511	I	97-1	205
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LEGISLATIVE CHRONOLOGY

1. Chapter 13 (Senate Bill 31) of the Laws of Maryland 1954: requiring meetings of Executive Branch boards and commissions to be open to the public, but allowing these bodies to hold “executive session[s] from which the public is excluded” for any purpose other than final adoption of a regulation or resolution.

2. Senate Bill 289 (1976 Session) (vetoed): embodying recommendations of the Legislative Council for a “sunshine” law. See Legislative Council, *Report to the General Assembly of 1976* at 207, 215-16, 322, and 337.

3. Veto of Senate Bill 289: objections by Governor Mandel, primarily to “voidability” provision and inclusion of advisory bodies. See 2 Laws of Maryland 1976 at 2747 (veto message of May 25, 1976).

4. Chapter 863 (Senate Bill 493) of the Laws of Maryland 1977: enacting the original Open Meetings Act as former Article 76A, §§7 through 15.

5. Chapter 284 (Senate Bill 50) of the Laws of Maryland 1984: recodifying open meetings provisions as part of the State Government Article.

6. Senate Bill 620 (1990 Session) (failed): proposed comprehensive revision of the Open Meetings Act.

7. Chapter 655 (Senate Bill 170) of the Laws of Maryland 1991: amending the Act significantly and creating the Open Meetings Compliance Board.

8. Chapter 473 (Senate Bill 269) of the Laws of Maryland 1994: deleting a “sunset” provision tied to the expanded definition of “public body.”