ARTICLE - STATE GOVERNMENT

TITLE 10. GOVERNMENTAL PROCEDURES

SUBTITLE 5. MEETINGS

10-501. Public 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) (1) "Administrative 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) "Administrative 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.

(c) "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 or an official who is subject to the policy direction of the Governor;

(3) the chief executive officer of a political subdivision of the State or an official who is subject to the policy director of the chief executive officer; or

(4) formal action by or for a public body that exercises an executive, judicial, legislative, quasi-judicial, or quasi-legislative function.

(d) "Board" means the State Open Meetings Law Compliance Board.

(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

(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, or appointed by an official who is subject to the policy direction of the Governor or chief executive authority of the political subdivision, if the entity includes in its membership at least 2 individuals not employed by the State or the political subdivision; 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 this 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) except as provided in paragraph (1) of this subsection, a subcommittee of a public body as defined under paragraph (2)(i) of this subsection;

(x) the governing body of a hospital as defined in § 19-301(g) of the Health - General Article; and

(xi) 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:

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. Open Meeting, Compliance Board.

There is a State Open Meetings Law Compliance Board.

10-502.2. Same - 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.

(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. Same - 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. Same - 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) 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.

(e) (1) On or before October 1 of each year, the Board shall submit an annual report to the Governor and the General Assembly, in accordance with §2-1246 of this article.

(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; and

(iv) any recommendations for improvements to the provisions of this subtitle.

10-502.5. Same - Complaint process.

(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, and except as provided in paragraph (3) of this subsection, 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)(i) The public body shall file a written response to the complaint within 30 days of its receipt of the complaint.

(ii) On request of the Board, the public body shall include with its written response to the complaint a copy of:

1. a notice provided under §10-506 of this subtitle;

2. a written statement made under §10-508(d)(2)(ii) of this subtitle; and

3. minutes and any tape recording made by the public body under §10-509 of this subtitle.

(iii) The Board shall maintain the confidentiality of minutes and any tape recording submitted by a public body that are sealed in accordance with §10-509(c)(3)(ii) of this subtitle.

(3) (i) If the public body identified in the complaint no longer exists, the Board shall promptly send the complaint to the official or entity that appointed the public body.

(ii) The official or entity that appointed the public body shall, to the extent feasible, comply with the requirements of paragraph (2) of this subsection.

(4) If after 45 days, a written response is not received, 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 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 title.

(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 violations.

(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 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 subsections (b) and (c) of this section, this subtitle does not apply to:

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

(i) an administrative 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.

(c) If a public body recesses an open session to carry out an administrative function in a meeting that is not open to the public, the minutes for the public body's next meeting shall include:

(1) a statement of the date, time, place, and persons present at the administrative function meeting; and

(2) a phrase or sentence identifying the subject matter discussed at the administrative function meeting.

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 meetings generally required.

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

10-506. Notice of meetings.

(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:
(i) by posting or depositing the notice at a convenient public location at or near the place of the session; or
(ii) by posting the notice on an Internet website ordinarily used by the public body to provide information to the public; or
(4) by any other reasonable method.

(d) A public body shall keep a copy of a notice provided under this section for at least 1 year after the date of the session.

10-507. Public Attendance.

(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 for hearing impaired.

(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 meetings.

(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:

(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.

(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.

(5) A public body shall keep a copy of the written statement made under paragraph (2)(ii) of this subsection for at least 1 year after the date of the session.

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;

(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 session may be tape recorded by a public body.

(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.

(e) A public body shall keep a copy of the minutes of each session and any tape recording made under subsection (c)(3)(i) of this section for at least 1 year after the date of the session.

10-510. Judicial 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.

(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 any 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

(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".

October 2007