

# COMPLYING WITH MARYLAND'S OPEN MEETINGS ACT

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# OBJECTIVES

- What is the Open Meetings Act?
  - why should a public body comply?
- What does it require of public bodies?
  - what activities does it govern? (or not)
  - what actions does it require before a meeting?
  - what actions does it require during a meeting?
  - what actions does it require after a meeting?
- How is the Act enforced?

# **OPEN MEETINGS ACT**

## **General Provisions Article**

### **Title 3**

## **Annotated Code of Maryland**

# THE LEGISLATURE'S POLICY STATEMENT:

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.

# **DO THESE 3 THINGS AND YOUR MEETINGS WILL COMPLY WITH THE OPEN MEETINGS ACT:**

1. Before: provide advance public notice and an agenda
2. During: hold meeting open to public
3. After: prepare minutes
- [4. Make sure your public body designates a trainee]

**ACTIVITIES GOVERNED (1):**  
**THOSE OF A “PUBLIC BODY”-**  
**§3-101(H)**

- Multi-member
- Formal creation (law, charter, bylaw, rule, resolution)
- Or by executive appointment, if including 2 or more members of the public
- Committees and subcommittees, depending on creation
- Informally created public bodies, sometimes
- Nominally private corporations, sometimes

# ACTIVITIES GOVERNED (2): THE PUBLIC BODY'S "MEETINGS" - §§3-101(G), (K), 3-103

- Any **deliberation, consideration or transaction** of public business among a quorum
- **Quorum** convened – or cycled through a room to evade the Act
- Conference calls or other methods of **simultaneous** interaction
- **Electronic communications** allowing continued and interactive group deliberation on public business
- **Social gatherings** and retreats when public business is discussed,
- But **not** social gatherings when **no** public business is discussed

# ELECTRONIC DELIBERATIONS ON PUBLIC BUSINESS

- **Transmitting information** by email, text, etc. , without discussion, is generally acceptable
- *But the public has the right to observe when communications become **deliberations on public business covered by the Act***
- Thus, **emails (or texts)** used by a quorum to deliberate and decide matters of public business **may violate the Act. Avoid:**
  - “Reply-all” and group/circulated emails
  - Continuous deliberation on a matter leading to a decision
  - Effectively constant messages even if not simultaneous
- Options for urgent matters may include: conference call after public notice; individual emails without interactive deliberation; potential online public meeting allowing public to observe; <sup>8</sup> delegation to staff. Note: The Act prohibits “evasive devices.”



**ACTIVITIES GOVERNED (3):**  
**TOPICS OF DISCUSSION**  
**(“FUNCTIONS”) DEFINED BY THE**  
**ACT - §§ 3-101 DEFINITIONS;**  
**3-103 SCOPE.**

- Covered: Advisory, legislative, quasi-legislative functions, all as specially defined by the Act.
- Excluded: administrative (formerly executive), judicial, quasi-judicial functions
- Expressly *included*: discussions concerning
  - » Granting a license or permit
  - » Many types of land-use matters

**ACTIVITIES GOVERNED (4):**  
**THE ADMINISTRATIVE (FORMERLY**  
**EXECUTIVE) FUNCTION EXCLUSION -**  
**§§ 3-101(B), 3-104**

- Topic must not fall within any other defined function
- Public body must be applying existing law or policy --**not** creating law or policy
- Meeting might be subject to reporting requirement
- Exclusion is not related to confidentiality issues

# **ACTIONS BEFORE A MEETING:** **PUBLIC NOTICE OF MEETINGS –** **§ 3-302**

- Timing
- Reasonably in advance
- Last-minute meetings – special efforts
- Content
- Date, time, place, open/then closed status (vote to close is public)
- Agenda: Make agenda “available” in advance, with topics and items of business
- Method
- Consistency

# ACTIONS DURING A MEETING (1): LOGISTICS - § 3-303

- Location
- Public participation – **not required by Act**
- Cameras/tape recorders – model rules
- Documents and communications referred to during meeting- access?
- Audible discussion

# ACTIONS DURING A MEETING (2): CLOSING A MEETING – §§ 3-305, - 306(C), -104

- Identifying a specific exception
- Completing a meaningful written “closing statement” – citation, topic, reasons for excluding; Chair’s duty to prepare/sign it
- Holding a public vote to close, after proper notice of the open session
- Staying within the exception on the statement
- Deciding on post-meeting disclosures
- 2 model closing statements on Attorney General’s website
- Complying with new training requirements; completing Compliance Checklist if member designated for training can’t attend.
- Closed session **impermissible** if public body hasn’t designated a member for training. § 3-213.

**ACTIONS DURING A MEETING (3):**  
**15 EXCEPTIONS (ALL TO BE CONSTRUED**  
**NARROWLY) - GP § 3-305(B)**

- Personnel matters regarding individual employees
- Receipt of legal advice
- Litigation
- Real property acquisition (not sale)
- Collective bargaining
- Certain business development proposals
- Certain public security matters
- Cyber security: If identified risk to information resources or network management
- Other law requiring confidentiality ... and 6 others

# **ACTIONS AFTER A MEETING (1): MEANINGFUL MINUTES – § 3-306**

- Required timeliness; content
- Open-session minutes: Available on request, without redaction
- Post online if “practicable” (new requirement)
- Tape recording ≠ minutes
- Closed-session minutes: Sealed, with publicly available summary in minutes of next open session (requirement extends to certain administrative function sessions not open to public)
- Use of live and streaming audio or video for open-session minutes
- Summary of closed session with 4 required items of information; Compliance Checklist, when required. § 3-213.

# ACTIONS AFTER A MEETING (2): MEANINGFUL MINUTES – § 3-104 AND § 306

- Minutes of the next open meeting must include:
  - Purpose for the closed meeting
  - Citation authorizing closed meeting
  - Votes to close
  - The topics and subject matter actually discussed
  - Actions taken (if any)
  - Date, time, place
  - Persons present
- For a template, go to open meetings page on Attorney General's website
- Only exception -- §3-104; *closing an open meeting* for the **administrative function**. Minutes must include (1) the subject matter discussed, (2) date/time/place and (3) persons present<sup>46</sup>



# **ACTIONS AFTER A MEETING (3):** **RECORD RETENTION – §§ 3-302,** **3-306**

- Notice (screenshot of online notice should be printed out with date of posting) (1 year)
- Minutes and tape recordings (5 years)
- Sealed minutes (1 year)
- Closing statements (likely 1 year)
- Archiving requirements - other laws might apply
- Access: open to inspection at the office on request. Minutes to be posted online to the extent “practicable”

## REMEDIES- 2 ROUTES

- (1) Open Meetings Compliance Board: Advisory opinions – §§ 3-204 through 3-212

When OMCB finds violation, public body must summarize the opinion at the next public meeting, sign it, and return it to the Compliance Board

- (2) Circuit Court: Orders – §§ 3-401 and 3-402

Court may overturn public body's action in some cases, assess penalty, and award attorney's fees

# **TRAINING REQUIREMENT (1) – § 3-213**

- Designation by “each public body” of a member, officer, or employee to “receive training”
- Designee must take training within 90 days of the designation (Training received before October 1, 2013 does not qualify)
- If the designee no longer serves on or works for the public body, the public body needs to designate a new one

# **TRAINING REQUIREMENT (2) – § 3-213**

- Public body may not meet in closed session unless a member has been designated to take the training
  - Designated member must attend open session at which public body votes to hold closed session or
  - If designated member cannot attend, public body must complete Compliance Checklist and attach it to open-session minutes
- Public bodies should retain their own proof that the training was received and not send it to the Compliance Board

# ISSUES, EXAMPLES, AND QUESTIONS

- Common causes of violations (unplanned meetings, lack of staff, staff turnover, member turnover, member desire to control information, lack of knowledge about the Act's requirements, lack of agenda planning)
- Steps to avoid complaints (follow the 4 steps; identify the person responsible for various compliance tasks; include tasks in job descriptions; adopt schedule for training; plan meeting topics; orient new members and staff)
- Avoidance of electronic or other non-public communications which include deliberation and/or decision on public matters by a quorum
- Responses to complaints (see the procedures posted online); addressing constituents' concerns early
- Questions, examples

# MORE INFORMATION

- Compliance checklist, model closing forms and summary, FAQs, Compliance Board opinions, and topical index:  
<http://www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx>
- Online class: Institute for Governmental Service and Research website: [www.igsr.umd.edu](http://www.igsr.umd.edu)
- Open Meetings Act Manual (9<sup>th</sup> ed. December 2016 with June 2017 Updates), also accessible through the “Open Meetings” page