



BOARD OF REGENTS

SUMMARY OF ITEM FOR ACTION, INFORMATION OR DISCUSSION

TOPIC: Open Meetings Act Training

COMMITTEE: BOR Retreat

DATE OF COMMITTEE MEETING: October 4, 2013

SUMMARY: The BOR will be briefed on the requirements of the Open Meetings Act.

ALTERNATIVE(S): The BOR could decide not to be briefed on the topic.

FISCAL IMPACT: None

CHANCELLOR'S RECOMMENDATION: The Chancellor supports the BOR briefing to ensure that the USM BOR is in compliance with the requirements of the Open Meetings Act.

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SUBMITTED BY: Janice B. Doyle, 301 445-1906, jdoyle@usmd.edu

An Outline of Maryland's Open Meetings Act (State Government Article §§ 10-501-11)

I. Policy and purpose. § 10-501 provides:

(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) Accountability; faith; effectiveness. – (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. ***

II. Scope. The Act applies, or not, according to the type of entity, event, and function performed.

A. Entities covered: The Act applies to “public bodies” – statutorily defined in 3 ways, all focusing on method of creation and appointment. Also, courts have inferred public body status when an entity performs public functions and is governmentally controlled. The Act applies to bodies with members, not, for instance, to executive agencies. § 10-502 (h). The Public Information Act applies to the records of a broader range of entities (units and instrumentalities of State and local governments).

B. Events covered: The Act applies to “meetings” – defined as a quorum of members convened to consider or transact public business. The Act does not apply to other modes of decision-making, (for instance, by circulation of documents), though other laws might require meetings for actions. The Act does not apply to social events when no business is discussed; does not apply in the absence of a quorum unless people are being cycled through to evade the Act (*C.L.U.B. v. City of Baltimore*, 377 Md. 183 (2003)); does not apply to “accidental quorums” when no public business is discussed. §§ 10-502(g), 10-503.

C. Functions covered: The Act applies to all meetings unless the public body has met solely to perform a function expressly excluded by the Act. “Judicial,” “quasi-judicial,” and “administrative” functions are expressly excluded, except that land-use and licensing and permitting matters are subject to the Act. §§ 10-503, 10-505. Broadly stated, a public body performs quasi-judicial functions when its decision in a matter is subject to judicial review under the rules applicable to agency decisions. It performs an “administrative function” when it merely applies a pre-existing law, regulation, or policy, as when a board processes claims under existing regulations. A discussion is not “administrative” in nature if it is “advisory,” “legislative,” “quasi-legislative,” “quasi-judicial,” or “judicial,” all as defined in SG § 10-502.

III. Substantive requirements: The Act sets rules for notice, open access, exceptions, and disclosures.

A. Notice. The Act requires “reasonable advance notice” of meetings and sets forth notice methods, content, timing, and retention. The Act does not require a public body to post an agenda, but the public body must specify that it will close part of the meeting to the public if the public body expects to do so. § 10-506 provides choices as to method. State public bodies may give notice in the Maryland Register. All public bodies may use: (1) delivery to news media representatives who “regularly report” on the public body’s activities; or, (2) after notice of the

method, internet posting or posting "at a convenient public location at or near the place of the session;" or (3) "any other reasonable method."

B. Open access - The "general public is entitled to attend." A public body may have an individual removed if the presiding officer determines that the individual is disrupting the meeting. Public bodies "shall adopt and enforce reasonable rules" of conduct, including taping, broadcasting, etc. § 10-507.

C. Exceptions to open access. 14 topics may be discussed in closed session after the body has voted to close the meeting and the presiding officer has completed a written closing statement. Examples: discussions about individual employees, lawsuits, procurement, collective bargaining, acquisition of real property, security, matters protected by other laws. § 10-508. Actions must be disclosed, at least generically, in the minutes of next open session. A model closing statement is posted at <http://www.oag.state.md.us/Opengov/Openmeetings/AppC.pdf>.

D. Disclosures: Minutes are to be adopted promptly and made available for inspection at office. § 10-509. Closing statements must be available when made and kept for a year. Minutes of open meetings may be written or provided by live and archived video/audio streaming.

IV. Compliance Board complaint process and judicial enforcement. The Act creates a Board with advisory functions and also allows "any person" to file suit. §§ 10-502.1 -.6; § 10-510.

A. Compliance Board: The Board issues written advisory opinions and an annual report, (<http://www.oag.state.md.us/Opengov/Openmeetings/cboardannreport.pdf>), and has educational functions. Its 8 members are appointed by the governor and serve on a voluntary basis. The Board is unfunded; the Attorney General's Office provides staff, traditionally in the Opinions and Advice section. The Act provides for written complaints and responses and conferences when needed.

B. Judicial enforcement. A person may file a complaint in circuit court, which may award legal fees to the prevailing party. The Act imposes a presumption that the public body has complied. Remedies can include undoing the action. Courts may also invalidate an action under statutes that impose stricter requirements. *See WSG Holdings, LLC v. Bowie*, 429 Md. 598 (2012) (invalidating action based on site visit that violated open meetings requirements in the former Art. 66B).

C. \$100 civil penalty.

V. Training/outreach

A. Online course, made by the Institute for Governmental Service and Research ("IGSR") and Attorney General's office. http://www.igsr.umd.edu/VLC/OMA/class_oma_intro1.php.

B. Conferences of local government officials and presentations at various meetings. IGSR's Academy for Excellence in Local Governance includes and requires an Open Meetings class in its certificate program.

C. Material on Attorney General's website: manual, compliance checklist, model closing statement, complaint procedures, Compliance Board opinions and topic index.