

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 235 (Delegates Carr and Lehman)  
Health and Government Operations

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Open Meetings Act - Definition - Administrative Function

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This bill alters the definition of “administrative function” as it applies to Maryland’s Open Meetings Act (OMA) to exclude the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of an appointee, employee, or official over whom the public body has direct jurisdiction. Thus, such matters do not fall under OMA’s administrative function exclusion; in order for a public body to discuss such matters outside of an open meeting, a public body must close a meeting in accordance with existing OMA procedures for closed sessions.

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Fiscal Summary

**State Effect:** The change is procedural in nature; public bodies can comply with the change with existing budgeted resources. Revenues are not affected.

**Local Effect:** None. The change is procedural in nature and does not directly affect local government finances. Any potential increase in the assessment of existing civil penalties for violations of OMA is not expected to materially affect revenues.

**Small Business Effect:** None.

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Analysis

**Current Law:**

*Open Meetings Act, Generally*

Under OMA, with limited exceptions, a public body must (1) meet in open session in places reasonably accessible to potential attendees and (2) provide reasonable advance notice of

the time and location of meetings, including, when appropriate, whether any portion of a meeting will be in closed session. A “public body” is any entity that (1) consists of at least two individuals and (2) is created by the Maryland Constitution; a State statute; a county or municipal charter; a memorandum of understanding or a master agreement to which a majority of the county boards of education and the Maryland State Department of Education are signatories; an ordinance; a rule, resolution, or bylaw; or an executive order of the Governor or of the chief executive authority of a political subdivision. Exclusions from the definition of “public body” include juries, the Governor’s cabinet and Executive Council, judicial nominating commissions, and single-member entities, among others.

#### *Administrative Function Exclusion*

OMA generally does not apply to a public body when carrying out an administrative function. “Administrative function,” as defined under OMA, means the administration of a law of the State, a law of a political subdivision of the State, or a rule, regulation, or bylaw of a public body. It does not include an advisory, judicial, legislative, quasi-judicial, or quasi-legislative function.

OMA also does not generally apply to a public body when carrying out a judicial or quasi-judicial function as defined under OMA.

#### *Personnel Matters*

A public body may meet in closed session or adjourn an open session to a closed session only under specified circumstances, including to discuss (1) the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of an appointee, employee, or official over whom it has jurisdiction or (2) any other personnel matter that affects one or more specific individuals.

According to the *Open Meetings Act Manual* prepared by the Office of the Attorney General (OAG), the Open Meetings Law Compliance Board has found that discussions about particular employees or appointees sometimes also fall within OMA’s administrative function exclusion; thus, in such circumstances, OMA generally does not apply, with the exception of specified disclosure requirements that apply when a public body closes an open meeting to address administrative matters.

#### *Closed Sessions, Generally*

A public body may not meet in closed session unless a majority of the members of the public body present and voting vote in favor of closing the session. Before a public body meets in closed session, the presiding officer must conduct a recorded vote on the closing of the session and make a written statement of the reason for closing of the meeting,

including the citation of the authority to close the session and a listing of the topics to be discussed. The written statement must be a matter of public record, and the public body must keep a copy of the written statement for at least one year after the date of the session.

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 must 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.

A public body may not meet in closed session unless at least one member of the body has been designated to receive training on the requirements of the open meetings law. If a designated individual cannot be present at an open meeting at which the public body votes to hold a closed session, the body must complete a specified compliance checklist developed by OAG and include the checklist in the meeting minutes.

#### *Open Meetings Law Compliance Board*

The State Open Meetings Law Compliance Board must receive, review, and resolve complaints from any person alleging a violation of OMA and issue a written opinion as to whether a violation has occurred. The opinions of the board are advisory only. The board may not require or compel any specific actions by a public body. By October 1 each year, the board must submit an annual report to the Governor and the General Assembly that includes specified information about the number, nature, and disposition of cases brought before it. In addition, the board must post the names of public bodies determined to have violated OMA and the opinions that describe the violations on the Open Meetings Act page of the OAG's website.

#### *Enforcement*

Subject to specified 45-day time limitations, for specified OMA violations, any person may file a petition with a circuit court that asks the court to determine the applicability of the provisions, require the public body to comply with the provisions, or void the action of the public body. A court may determine the applicability of OMA to the discussions or decisions of public bodies and order specified relief. If the court finds that a public body willfully failed to comply with specified OMA requirements, and that no other remedy is adequate, the court may declare a final action of the public body void. A public body that willfully meets with knowledge that the meeting is being held in violation of open meetings requirements is subject to a civil penalty of up to \$250 for the first violation and up to \$1,000 for each subsequent violation that occurs within three years after the first violation.

## **Additional Information**

**Prior Introductions:** HB 920 of 2021, a similar bill, was reported favorably with amendments by the House Health and Government Operations Committee but was recommitted to the committee. No further action was taken.

**Designated Cross File:** None.

**Information Source(s):** Department of Commerce; Office of the Attorney General; Maryland Department of the Environment; Department of General Services; Maryland Department of Health; Department of Housing and Community Development; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Public Service Commission; Prince George's County Public Schools; Maryland Association of Counties; Department of Legislative Services

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