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**STATE OF MARYLAND
OPEN MEETINGS COMPLIANCE BOARD**

March 10, 2021

The Honorable Shane E. Pendergrass, Chair
Health and Government Operations Committee
House Office Building, Room 241
6 Bladen Street
Annapolis, MD 21401

Re: House Bill 920
Position: Opposed

Dear Chair Pendergrass:

As Chair of the Open Meetings Compliance Board, I am writing to convey the Board's position regarding House Bill 920. Currently, the Open Meetings Act does not apply to a public body when it is carrying out "an administrative function." Md. Code Ann., Gen. Prov. ("GP") § 3-103(a)(1)(i). House Bill 920 would exclude "any personnel matter that affects one or more specific individuals" from the definition of "administrative function."

In applying the current law, the Board has advised that various personnel matters generally fall within the administrative function exclusion and are thus exempt from the Act's requirements, including job interviews, 4 *OMCB Opinions* 182, 184 (2005), staff appointments, 1 *OMCB Opinions* 123, 124 (1995), performance evaluations, 10 *OMCB Opinions* 104, 106 (2016), and dismissal of individual employees, 9 *OMCB Opinions* 290, 295 (2015). House Bill 920 would subject these tasks to all requirements of the Act.

Although the Board supports bringing additional clarity to the often-confusing administrative function exclusion, the Board opposes House Bill 920. The Board has two

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primary concerns. First, while the bill expressly removes personnel matters from the administrative function exclusion, thus making them subject to the Act, it leaves in place the open-meeting exception in § 3-305(b)(1). Section 3-305(b)(1) currently provides that a public body may meet in closed session to consider “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 “any other personnel matter that affects one or more specific individuals.” GP § 3-305(b)(1).

Thus House Bill 920 would not in practice enable the public to observe public body meetings on personnel matters. Instead, it merely would require public bodies to observe the Act’s closing procedures before handling any personnel business, no matter how routine. For example, House Bill 920 would require a town council to give public notice and begin an open meeting, followed by a vote to close and a formal closed session, to conduct a job interview or speak with an employee about a minor disciplinary matter such as lateness. Expanding the Act’s scope in this way would heighten the burden on our volunteer Board, by significantly increasing the frequency of Open Meetings Act complaints, but more importantly would substantially add to the compliance burden on public bodies, for no clear public benefit.

Second, it is the Board’s view that significant changes to the Open Meetings Act should be enacted only after careful study of the proposed amendment’s impact on the Act’s purposes and on public bodies. No such study has been conducted here, and the Board is concerned that hasty amendments to significant legislation have the potential to do more harm than good.

In sum, the Board is concerned that this far-reaching bill could add significant administrative burdens for both public bodies and the Board itself, without any meaningful benefit in terms of increased public access to government decision-making. The Board supports the effort to clarify the administrative function exclusion and encourages careful study of the matter.

Thank you for considering the position of the Compliance Board on this bill.

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Very truly yours,

Lynn Marshall /tc

Lynn Marshall, Esquire
Chair
Open Meetings Compliance Board

cc: Open Meetings Compliance Board