

# HOUSE BILL 48

G2, P3, P5

8lr1068

(PRE-FILED)

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By: **Delegate Cluster**

Requested: November 2, 2017

Introduced and read first time: January 10, 2018

Assigned to: Environment and Transportation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Joint Committee on Legislative Ethics – Confidentiality of Activities – Repeal**

3 FOR the purpose of providing that certain provisions of law relating to the authority of  
4 public bodies to meet in closed session do not apply to the Joint Committee on  
5 Legislative Ethics; providing that a certain provision of law related to the  
6 confidentiality of certain information does not apply to the Joint Committee;  
7 providing that the requirement that an advisory body delete certain information  
8 before an advisory opinion can be made public does not apply to the Joint Committee;  
9 repealing the requirement that the cochairs of the Joint Committee determine  
10 whether an opinion of the Joint Committee is to be made public; repealing certain  
11 provisions of law requiring that certain matters before the Joint Committee remain  
12 confidential except under certain circumstances; making conforming changes; and  
13 generally relating to the confidentiality of the activities of the Joint Committee on  
14 Legislative Ethics.

15 BY repealing and reenacting, with amendments,  
16 Article – General Provisions  
17 Section 3–206(b)(2)(ii), 3–305, 3–306(c)(4)(i) and (ii), 5–301, 5–303, 5–515, and  
18 5–518(b)  
19 Annotated Code of Maryland  
20 (2014 Volume and 2017 Supplement)

21 BY repealing  
22 Article – General Provisions  
23 Section 5–517  
24 Annotated Code of Maryland  
25 (2014 Volume and 2017 Supplement)

26 BY repealing and reenacting, with amendments,  
27 Article – State Government

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 2–709  
2 Annotated Code of Maryland  
3 (2014 Replacement Volume and 2017 Supplement)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
5 That the Laws of Maryland read as follows:

6 **Article – General Provisions**

7 3–206.

8 (b) (2) On request of the Board, the public body shall include with its written  
9 response to the complaint a copy of:

10 (ii) any written statement made under [§ 3–305(d)(2)(ii)] §  
11 **3–305(E)(2)(II)** of this title; and

12 3–305.

13 **(A) THIS SECTION DOES NOT APPLY TO THE JOINT COMMITTEE ON**  
14 **LEGISLATIVE ETHICS.**

15 [(a)] **(B)** The exceptions in subsection [(b)] **(C)** of this section shall be strictly  
16 construed in favor of open meetings of public bodies.

17 [(b)] **(C)** Subject to subsection [(d)] **(E)** of this section, a public body may meet  
18 in closed session or adjourn an open session to a closed session only to:

19 (1) discuss:

20 (i) the appointment, employment, assignment, promotion,  
21 discipline, demotion, compensation, removal, resignation, or performance evaluation of an  
22 appointee, employee, or official over whom it has jurisdiction; or

23 (ii) any other personnel matter that affects one or more specific  
24 individuals;

25 (2) protect the privacy or reputation of an individual with respect to a  
26 matter that is not related to public business;

27 (3) consider the acquisition of real property for a public purpose and  
28 matters directly related to the acquisition;

29 (4) consider a matter that concerns the proposal for a business or industrial  
30 organization to locate, expand, or remain in the State;

- 1           (5)    consider the investment of public funds;
- 2           (6)    consider the marketing of public securities;
- 3           (7)    consult with counsel to obtain legal advice;
- 4           (8)    consult with staff, consultants, or other individuals about pending or  
5 potential litigation;
- 6           (9)    conduct collective bargaining negotiations or consider matters that  
7 relate to the negotiations;
- 8           (10)   discuss public security, if the public body determines that public  
9 discussion would constitute a risk to the public or to public security, including:
- 10           (i)     the deployment of fire and police services and staff; and
- 11           (ii)    the development and implementation of emergency plans;
- 12           (11)   prepare, administer, or grade a scholastic, licensing, or qualifying  
13 examination;
- 14           (12)   conduct or discuss an investigative proceeding on actual or possible  
15 criminal conduct;
- 16           (13)   comply with a specific constitutional, statutory, or judicially imposed  
17 requirement that prevents public disclosures about a particular proceeding or matter; or
- 18           (14)   discuss, before a contract is awarded or bids are opened, a matter  
19 directly related to a negotiating strategy or the contents of a bid or proposal, if public  
20 discussion or disclosure would adversely impact the ability of the public body to participate  
21 in the competitive bidding or proposal process.

22           **[(c)] (D)**    A public body that meets in closed session under this section may not  
23 discuss or act on any matter not authorized under subsection **[(b)] (C)** of this section.

24           **[(d)] (E)**    (1)    Unless a majority of the members of a public body present and  
25 voting vote in favor of closing the session, the public body may not meet in closed session.

26           (2)    Before a public body meets in closed session, the presiding officer shall:

27           (i)     conduct a recorded vote on the closing of the session; and

28           (ii)    make a written statement of the reason for closing the meeting,  
29 including a citation of the authority under this section, and a listing of the topics to be  
30 discussed.

1 (3) If a person objects to the closing of a session, the public body shall send  
2 a copy of the written statement to the Board.

3 (4) The written statement shall be a matter of public record.

4 (5) A public body shall keep a copy of the written statement for at least 1  
5 year after the date of the session.

6 3–306.

7 (c) (4) The minutes and any recording shall be unsealed and open to inspection  
8 as follows:

9 (i) for a meeting closed under [§ 3–305(b)(5)] **§ 3–305(C)(5)** of this  
10 subtitle, when the public body invests the funds;

11 (ii) for a meeting closed under [§ 3–305(b)(6)] **§ 3–305(C)(6)** of this  
12 subtitle, when the public securities being discussed have been marketed; or

13 5–301.

14 (a) (1) Subject to subsection (b) of this section, on written request of an entity  
15 subject to this title, the appropriate advisory body shall issue an advisory opinion regarding  
16 the application of this title.

17 (2) On written request of any other entity, the appropriate advisory body  
18 may issue an advisory opinion.

19 (b) (1) The appropriate advisory body may issue informal advice instead of an  
20 advisory opinion.

21 (2) **(I) THIS PARAGRAPH DOES NOT APPLY TO INFORMATION**  
22 **RELATED TO INFORMAL ADVICE PROVIDED BY THE JOINT ETHICS COMMITTEE.**

23 **(II)** Information related to informal advice provided under this  
24 subsection shall remain confidential and is not subject to the requirements of § 5–303 of  
25 this subtitle.

26 5–303.

27 (a) Each advisory opinion shall be:

28 (1) in writing; and

29 (2) published in the Maryland Register, subject to subsection (b) of this  
30 section.

1 (b) (1) THIS SUBSECTION DOES NOT APPLY TO THE JOINT ETHICS  
2 COMMITTEE.

3 [(1)] (2) Before an advisory opinion may be made public, the advisory  
4 body shall delete:

5 (i) the name of the entity that is the subject of the opinion; and

6 (ii) to the fullest extent possible, any other information that may  
7 identify the entity.

8 [(2)] (3) The identity of the entity that is the subject of the opinion may  
9 not be revealed.

10 5-515.

11 (a) (1) A legislator may request a written opinion from the Joint Ethics  
12 Committee on the propriety of any current or proposed conduct of the legislator and  
13 involving the applicable standards of ethical conduct for legislators established by law, rule,  
14 or other standard of ethical conduct.

15 (2) A request for an opinion shall:

16 (i) be in writing and signed by the legislator;

17 (ii) be addressed to the Joint Ethics Committee or either cochair;

18 (iii) be submitted in a timely manner; and

19 (iv) include a complete and accurate statement of the relevant facts.

20 (3) If a request is unclear or incomplete, the Joint Ethics Committee may  
21 seek additional information from the legislator.

22 (4) (i) The Counsel to the Joint Ethics Committee shall prepare for the  
23 Committee a response to each written request for an opinion under this subsection.

24 (ii) Each opinion shall discuss all applicable laws, rules, or other  
25 standards.

26 (5) Except as provided in paragraph (6)(i) of this subsection, an opinion  
27 must be approved by a majority of the members of the Joint Ethics Committee.

28 (6) (i) The cochairs of the Joint Ethics Committee may approve an  
29 opinion on behalf of the Committee if they determine that the opinion is consistent with  
30 prior precedent and therefore does not require consideration by the full Committee.

1 (ii) An opinion issued under subparagraph (i) of this paragraph shall  
2 be distributed to each member of the Joint Ethics Committee not later than the next  
3 meeting of the Committee.

4 (iii) Notwithstanding subparagraph (i) of this paragraph, if a cochair  
5 of the Joint Ethics Committee is the legislator requesting the opinion, the opinion must be  
6 approved by a majority of the Committee.

7 (b) The Joint Ethics Committee is not required to issue an opinion if the request  
8 is not made in a timely manner.

9 (c) The Joint Ethics Committee on its own motion may issue opinions as it  
10 considers appropriate.

11 (d) [(1) The cochairs shall determine whether an opinion shall be made public,  
12 with deletions and changes necessary to protect the legislator's identity.]

13 [(2) (i) (1) The Counsel to the Joint Ethics Committee shall compile  
14 and index each opinion [that will be made public].

15 [(ii) (2) The compilation of opinions shall be distributed to each  
16 member of the General Assembly and shall be available to the public.

17 (e) The Joint Ethics Committee may take no adverse action with regard to  
18 conduct that has been undertaken in reliance on a written opinion if the conduct conforms  
19 to the specific facts addressed in the opinion.

20 (f) Information provided to the Joint Ethics Committee by a legislator seeking  
21 advice regarding prospective conduct may not be used as the basis for initiating an  
22 investigation under this section if the legislator acts in good faith in accordance with the  
23 advice of the Committee.

24 (g) (1) An opinion issued under this section is binding on any legislator to  
25 whom it is addressed.

26 (2) A published opinion is binding on all members of the General Assembly.

27 [5-517.

28 (a) Except as provided in subsection (b) of this section, any matter before the Joint  
29 Ethics Committee, including information relating to any complaint, proceeding, or record  
30 of the Joint Ethics Committee, shall remain confidential.

31 (b) Public access and inspection of an activity or a record of the Joint Ethics  
32 Committee shall be available for:

1 (1) a disclosure or disclaimer of a conflict of interest form filed with the  
2 Joint Ethics Committee;

3 (2) a portion of a meeting in which a disclosure or disclaimer form is  
4 reviewed by the Joint Ethics Committee;

5 (3) information relating to a complaint, proceeding, or record of the Joint  
6 Ethics Committee involving a member of the General Assembly if consent to public access  
7 and inspection is granted by:

8 (i) the member involved in the matter; or

9 (ii) a three-fourths vote of the full membership of the Joint Ethics  
10 Committee, based on criteria established by rule;

11 (4) a rule or broadly applicable opinion issued by the Joint Ethics  
12 Committee; or

13 (5) any matter or record that is otherwise available for public access or  
14 inspection as specifically authorized under this subtitle.]

15 5–518.

16 (b) (1) If a finding is made under subsection (a) of this section, the Joint Ethics  
17 Committee shall:

18 (i) submit a report of its conclusions to the presiding officer or to the  
19 membership of the branch of the legislature of which the accused legislator is a member,  
20 and the proceedings shall be terminated;

21 (ii) provide advice or guidance to the accused legislator; or

22 (iii) provide the accused legislator with an opportunity to cure any  
23 minor violation of ethical standards.

24 (2) (i) [Subject to § 5–517 of this subtitle, notice] **NOTICE** of the Joint  
25 Ethics Committee’s action shall be provided to the accused legislator and to any person who  
26 filed the complaint.

27 (ii) On request, the accused legislator may see the complaint and the  
28 report.

29 **Article – State Government**

30 2–709.

1 (a) The Executive Director of the Department of Legislative Services, subject to  
2 the approval of the President and Speaker, shall appoint an attorney to serve as Counsel  
3 to the Committee.

4 (b) The Counsel:

5 (1) shall devote full time to the duties of the Committee, but may not  
6 participate in any investigatory or prosecutorial function;

7 (2) may provide information to any person regarding laws, rules, and other  
8 standards of ethical conduct applicable to members of the General Assembly;

9 (3) shall carry out any duties prescribed under Title 15, Subtitle 5 of this  
10 article;

11 (4) shall meet individually with each member of the General Assembly  
12 each year to:

13 (i) advise the member regarding the requirements of any applicable  
14 ethics law, rule, or standard of conduct; and

15 (ii) assist the member in preparing statements and reports required  
16 to be filed with the Committee under Title 15, Subtitle 5, Part II of this article; and

17 (5) shall conduct seminars, workshops, and briefings for the benefit of  
18 members of the General Assembly, as directed by the Committee, the President, or the  
19 Speaker.

20 (c) The assistance of the Counsel to members of the General Assembly:

21 (1) is subject to the attorney client privilege, as set forth in § 9–108 of the  
22 Courts Article;

23 (2) is subject to confidentiality [under § 5–517 of the General Provisions  
24 Article]; and

25 (3) is intended as a service to the members and may not be deemed to  
26 diminish a member's personal responsibility for adherence to applicable laws, rules, and  
27 standards of ethical conduct.

28 (d) The Committee shall have other staff assistance as requested by the  
29 Committee and as provided in the budget of the General Assembly.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
31 October 1, 2018.