

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 48 (Delegate Cluster)  
Environment and Transportation

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Joint Committee on Legislative Ethics - Confidentiality of Activities - Repeal

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This bill repeals the requirement in the State Public Ethics Law that most matters before the Joint Committee on Legislative Ethics (JCLE) be kept confidential. Accordingly, the provisions of the Open Meetings Act and the Public Information Act (PIA) that exempt JCLE from their requirements in order to comply with JCLE's confidentiality statute, no longer apply. Most activities of the committee, including meetings, complaints, investigations, informal and formal advice, and enforcement activity, are subject to the remaining provisions in State law regarding open meetings and access to public records, including any existing statutory exceptions, to the extent that they apply.

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Fiscal Summary

**State Effect:** The bill's changes/requirements can be handled with existing budgeted resources.

**Local Effect:** The bill does not directly affect local governmental operations or finances.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The requirement that advisory bodies designated to administer the State Public Ethics Law keep all matters before them confidential is no longer applicable to JCLE. By removing the statutory confidentiality requirement, the activity of JCLE no longer falls within the mandatory exceptions to the general requirement in State law to conduct open meetings and provide the public access to records.

Specifically, meetings of JCLE are subject to the remaining provisions of the Open Meetings Act and are required to be held in open session. In addition, PIA applies to committee records such as complaints, advice, and opinions, to the extent that the records do not fall within one of the Act's remaining exceptions.

Advice from counsel is subject to confidentiality and remains protected by attorney/client privilege.

### **Current Law:**

#### *State Public Ethics Law, Generally*

The State Public Ethics Law sets out requirements, prohibitions, and procedures that affect officials in the Legislative, Executive, and Judicial branches of government for the purpose of maintaining people's trust in government and protecting against the improper influence and appearance of improper influence of government. Advisory bodies fall under specific confidentiality provisions that exempt them from the general mandate for open meetings and public access to records in order to encourage individuals to seek ethics guidance in confidence.

The State Public Ethics Law includes special rules for legislators. In general, an interest of a member of the General Assembly conflicts with the public interest if the legislator's interest tends to impair the legislator's independence of judgment. A conflict or presumed conflict disqualifies the legislator from participating in any legislative action, or otherwise attempting to influence any legislation, to which the conflict relates.

#### *Confidentiality of Advisory Opinions*

Advisory bodies in the State *must* issue an advisory opinion if a written request is submitted by an official, employee, or entity subject to the State Public Ethics Law regarding its application. If a request is submitted by any other entity, the advisory body *may* issue an advisory opinion or informal advice but it is not required to do so. All advisory opinions by the State Ethics Commission (SEC) must be in writing and published in the *Maryland Register*. Before an advisory opinion is made public, the advisory body must delete the name of the entity that is the subject of the opinion, as well as any other information that may identify the entity. The identity of this entity may not be revealed. Any information related to informal advice must be kept confidential and is not subject to the publication requirements for advisory opinions.

## *Joint Committee on Legislative Ethics*

JCLE is generally responsible for administering the State Public Ethics Law that relates to legislators. The committee receives and maintains various disclosures and disclaimers from members of the General Assembly, reviews complaints pertaining to members, issues advisory opinions when appropriate, and conducts hearings in accordance with specified procedures.

Unless a matter or record is otherwise available for public access or inspection under the State Public Ethics law, all matters before JCLE, including information relating to any complaint, proceeding, or record, must remain confidential with the exception of (1) a disclosure or disclaimer of a conflict of interest form filed with the committee; (2) any portion of a meeting in which a disclosure or disclaimer form is reviewed; (3) information regarding a complaint, proceeding, or record of JCLE that is authorized to be made publicly available by the member involved, or upon a three-fourths vote of the committee; or (4) a broadly applicable rule or opinion of the committee.

While meetings of JCLE are subject to the Open Meetings Law, provisions of that law require a meeting to be closed if it is prescribed in statute. Accordingly, JCLE meets in closed session when reviewing ethics enforcement or advice matters that require confidentiality. This procedure is similar to the confidential proceedings of SEC, which deliberates ethics complaints and considers advice in closed session pursuant to a specific confidentiality requirement.

The co-chairmen of JCLE must determine whether an advisory opinion is to be made public, with the necessary redactions to protect a legislator's identity. Counsel must compile and index each *published* advisory opinion, distribute the compilation to each member of the General Assembly, and make the publication available to the public. JCLE's public advisory opinions are published annually in the *Ethics Guide*. The State Public Ethics Law requires all informal advice to be kept confidential.

Ethics Counsel to the Maryland General Assembly must generally advise legislators regarding the requirements of any applicable ethics law, rule, or standard and assist with preparing statements and reports that are required to be filed under the State Public Ethics Law.

## *Open Meetings Act, Generally*

Under Maryland's Open Meetings Act, with limited exceptions, a "public body" must (1) provide reasonable advance notice of the time and location of meetings, including whether any portion of the meeting will be in closed session and (2) meet in open session in a location that is reasonably accessible to attendees. 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.

The Open Meetings Act establishes exemptions for public bodies that must comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures.

### *Closed Sessions*

A public body may meet in closed session or adjourn an open session to a closed session only to discuss specified topics, including personnel matters and legal advice/litigation, and to comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter.

### *Access to Public Records, Generally*

PIA establishes that all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. Each governmental unit that maintains public records must identify a representative who a member of the public may contact to request a public record. The Office of the Attorney General (OAG) must post all such contact information on its website and in any *Public Information Act Manual* published by OAG.

### *Duties of Custodians*

A custodian of a public record must designate types of public records that are to be made available to any applicant immediately on request and must maintain a current list of the types of public records that have been so designated. Generally, a custodian of a public record must permit inspection of the record at a reasonable time and within 10 working days of receiving a request.

### *Required Denials*

A custodian must deny inspection of a public record or any part of a public record if (1) the public record is privileged or confidential by law or (2) the inspection would be contrary to a State statute, a federal statute or regulation, the Maryland Rules, or an order of a court

of record. PIA also requires denial of inspection for personal and confidential records, including, for example, hospital and medical records, financial records, certain police and related criminal records, and licensing records.

### *Discretionary Denials*

Unless otherwise specified, if a custodian believes that inspection of a part of a public record by an applicant would be contrary to the public interest, the custodian may deny inspection to the applicant of that part of the record. PIA specifies the types of records that are eligible for discretionary denials, including documents that would not be available through discovery in a lawsuit.

A custodian that denies inspection of a public record on this basis must provide (1) a written statement to the applicant giving the reason for denial; (2) the legal authority on which it is based; (3) a brief description of the undisclosed record (without disclosing the protected information), including an explanation of why redacting information would not address the reason for the denial; and (4) a notice of the statutory remedies available.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** State Ethics Commission; Department of Legislative Services

**Fiscal Note History:** First Reader - January 24, 2018  
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