

HOUSE BILL 1243

Unofficial Copy  
P3

2004 Regular Session  
4lr0716  
CF 4lr0940

---

By: **Delegates Smigiel, Barkley, Boutin, Costa, Elmore, McComas, Myers, Oaks, Shank, Sophocleus, and Sossi Sossi, Hurson, Hammen, Boteler, Goldwater, Kach, McDonough, Rosenberg, and V. Turner**

Introduced and read first time: February 13, 2004  
Assigned to: Health and Government Operations

---

Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: March 27, 2004

---

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Open Meetings Act - ~~Scope~~ Executive Function - Study**

3 FOR the purpose of ~~altering the scope of the Open Meetings Act by repealing certain~~  
4 ~~terms; and generally relating to~~ requiring the State Open Meetings Law  
5 Compliance Board to undertake a certain study and issue a report on or before a  
6 certain date relating to the executive function under the Open Meetings Act.

7 ~~BY repealing and reenacting, with amendments,~~  
8 ~~Article State Government~~  
9 ~~Section 10-502 and 10-503~~  
10 ~~Annotated Code of Maryland~~  
11 ~~(1999 Replacement Volume and 2003 Supplement)~~

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

14 **~~Article State Government~~**

15 ~~10-502.~~

16 (a) ~~In this subtitle the following words have the meanings indicated.~~

17 (b) ~~"Advisory function" means the study of a matter of public concern or the~~  
18 ~~making of recommendations on the matter, under a delegation of responsibility by:~~

19 (1) ~~law;~~

- 1           (2)     the Governor;
- 2           (3)     the chief executive officer of a political subdivision of the State; or
- 3           (4)     formal action by or for a public body that exercises an executive,  
4 judicial, legislative, quasi judicial, or quasi legislative function.
- 5     (e)     ~~"Board" means the State Open Meetings Law Compliance Board.~~
- 6     ~~(d)~~   (1)     ~~"Executive function" means the administration of:~~
- 7           (i)     a law of the State;
- 8           (ii)    a law of a political subdivision of the State; or
- 9           (iii)   a rule, regulation, or bylaw of a public body.
- 10          (2)     ~~"Executive function" does not include:~~
- 11           (i)     an advisory function;
- 12           (ii)    a judicial function;
- 13           (iii)   a legislative function;
- 14           (iv)    a quasi judicial function; or
- 15           (v)     a quasi legislative function.]
- 16     ~~(e)~~   (D)   (1)     ~~"Judicial function" means the exercise of any power of the~~  
17 ~~Judicial Branch of the State government.~~
- 18          (2)     ~~"Judicial function" includes the exercise of:~~
- 19           (i)     a power for which Article IV, § 1 of the Maryland Constitution  
20 provides;
- 21           (ii)    a function of a grand jury;
- 22           (iii)   a function of a petit jury;
- 23           (iv)    a function of the Commission on Judicial Disabilities; and
- 24           (v)     a function of a judicial nominating commission.
- 25          (3)     ~~"Judicial function" does not include the exercise of rulemaking power~~  
26 ~~by a court.~~
- 27     ~~(f)~~   (E)   "Legislative function" means the process or act of:
- 28           (1)     approving, disapproving, enacting, amending, or repealing a law or  
29 other measure to set public policy;

- 1           (2)     ~~approving or disapproving an appointment;~~  
 2           (3)     ~~proposing or ratifying a constitution or constitutional amendment; or~~  
 3           (4)     ~~proposing or ratifying a charter or charter amendment.~~

4     ~~[(g)]~~   (F)     ~~"Meet" means to convene a quorum of a public body for the~~  
 5     ~~consideration or transaction of public business.~~

- 6     ~~[(h)]~~   (G)     (1)     ~~"Public body" means an entity that:~~  
 7                   (i)     ~~consists of at least 2 individuals; and~~  
 8                   (ii)    ~~is created by:~~  
 9                         1.     ~~the Maryland Constitution;~~  
 10                        2.     ~~a State statute;~~  
 11                        3.     ~~a county charter;~~  
 12                        4.     ~~an ordinance;~~  
 13                        5.     ~~a rule, resolution, or bylaw;~~  
 14                        6.     ~~an executive order of the Governor; or~~  
 15                        7.     ~~an executive order of the chief executive authority of a~~  
 16     ~~political subdivision of the State.~~

17           (2)     ~~"Public body" includes:~~  
 18                   (i)     ~~any multimember board, commission, or committee appointed~~  
 19     ~~by the Governor, or the chief executive authority of a political subdivision of the State,~~  
 20     ~~if the entity includes in its membership at least 2 individuals not employed by the~~  
 21     ~~State or a political subdivision of the State; and~~

22                   (ii)    ~~The Maryland School for the Blind.~~

23           (3)     ~~"Public body" does not include:~~

- 24                   (i)     ~~any single member entity;~~  
 25                   (ii)    ~~any judicial nominating commission;~~  
 26                   (iii)   ~~any grand jury;~~  
 27                   (iv)   ~~any petit jury;~~

28                   (v)     ~~the Appalachian States Low Level Radioactive Waste~~  
 29     ~~Commission established in § 7-302 of the Environment Article;~~

1 (vi) except when a court is exercising rulemaking power, any court  
2 established in accordance with Article IV of the Maryland Constitution;

3 (vii) the Governor's cabinet, the Governor's Executive Council as  
4 provided in Title 8, Subtitle 1 of the State Government Article, or any committee of  
5 the Executive Council;

6 (viii) a local government's counterpart to the Governor's cabinet,  
7 Executive Council, or any committee of the counterpart of the Executive Council;

8 (ix) the governing body of a hospital as defined in § 19-301(g) of the  
9 Health—General Article; and

10 (x) a self-insurance pool that is established in accordance with  
11 Title 19, Subtitle 6 of the Insurance Article or § 9-404 of the Labor and Employment  
12 Article by:

13 1. a public entity, as defined in § 19-602 of the Insurance  
14 Article; or

15 2. a county or municipal corporation, as defined in § 9-404 of  
16 the Labor and Employment Article.

17 [(i)] (H) "Quasi-judicial function" means a determination of:

18 (1) a contested case to which Subtitle 2 of this title applies;

19 (2) a proceeding before an administrative agency for which Title 7,  
20 Chapter 200 of the Maryland Rules would govern judicial review; or

21 (3) a complaint by the Board in accordance with this subtitle.

22 [(j)] (I) "Quasi-legislative function" means the process or act of:

23 (1) adopting, disapproving, amending, or repealing a rule, regulation, or  
24 bylaw that has the force of law, including a rule of a court;

25 (2) approving, disapproving, or amending a budget; or

26 (3) approving, disapproving, or amending a contract.

27 [(k)] (J) "Quorum" means:

28 (1) a majority of the members of a public body; or

29 (2) any different number that law requires.

30 40-503.

31 (a) Except as provided in subsection (b) of this section, this subtitle does not  
32 apply to:

1           (1)     a public body when it is carrying out:  
2                     (i)     ~~an executive function;~~  
3                     (ii)    ~~a judicial function; or~~  
4                     ~~(iii)    (H)    a quasi-judicial function; or~~  
5           (2)     ~~a chance encounter, social gathering, or other occasion that is not~~  
6 ~~intended to circumvent this subtitle.~~

7       (b)     The provisions of this subtitle apply to a public body when it is meeting to  
8 consider:

9           (1)     granting a license or permit; or  
10           (2)    a special exception, variance, conditional use, zoning classification,  
11 ~~the enforcement of any zoning law or regulation, or any other zoning matter.~~

12     SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
13 MARYLAND, That:

14       (a)     The State Open Meetings Law Compliance Board shall study the use of the  
15 executive function exclusion under the Open Meetings Act.

16       (b)     As part of its study, the Compliance Board shall:

17           (1)     consider the reliance on the executive function exclusion and the  
18 inappropriate use of the executive function, as reflected in the opinions of the  
19 Compliance Board;

20           (2)     consult with the Maryland Association of Counties, the Maryland  
21 Municipal League, the Maryland-Delaware-DC Press Association, and any other  
22 organization that the Compliance Board deems appropriate in connection with use of  
23 the executive function;

24           (3)     consider the benefits of retaining or eliminating the executive  
25 function exclusion under the Open Meetings Act and any alternatives that the  
26 Compliance Board considers appropriate; and

27           (4)     develop any recommendations that the Compliance Board considers  
28 appropriate for modification of the Open Meetings Act in connection with the  
29 executive function.

30       (c)     (1)     On or before December 1, 2004, the Compliance Board shall report to  
31 the House Health and Government Operations Committee and the Senate Education,  
32 Health, and Environmental Affairs Committee on the results of its study.

33           (2)     The report shall include proposed legislation that might be  
34 recommended by the Compliance Board as a result of its study.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2 ~~October~~ June 1, 2004.