

# SENATE BILL 984

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By: **Senators Zucker, Benson, Conway, Currie, Ferguson, Guzzone, Lee, Madaleno, McFadden, Middleton, Oaks, Peters, and Smith**

Introduced and read first time: February 5, 2018

Assigned to: Education, Health, and Environmental Affairs

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## A BILL ENTITLED

1 AN ACT concerning

2 **General Provisions – Open Meetings Act – Application to Governor’s Cabinet**  
3 **and Governor’s Executive Council**

4 FOR the purpose of altering the definition of “public body” for the purposes of the Open  
5 Meetings Act to include the Governor’s cabinet and the Governor’s Executive Council  
6 and any committee of the Council; authorizing the cabinet and the Council and any  
7 committee of the Council to meet in closed session for cause subject to a certain  
8 provision of law; requiring that each open session of the cabinet and the Council and  
9 any committee of the Council be streamed live; making a stylistic change; making  
10 conforming changes; and generally relating to the application of the Open Meetings  
11 Act to the Governor’s cabinet and the Governor’s Executive Council.

12 BY repealing and reenacting, without amendments,  
13 Article – General Provisions  
14 Section 3–101(a)  
15 Annotated Code of Maryland  
16 (2014 Volume and 2017 Supplement)

17 BY repealing and reenacting, with amendments,  
18 Article – General Provisions  
19 Section 3–101(h), 3–206(b)(2)(ii), 3–305, and 3–306  
20 Annotated Code of Maryland  
21 (2014 Volume and 2017 Supplement)

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

24 **Article – General Provisions**

25 3–101.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) In this title the following words have the meanings indicated.

2 (h) (1) “Public body” means an entity that:

3 (i) consists of at least two individuals; and

4 (ii) is created by:

5 1. the Maryland Constitution;

6 2. a State statute;

7 3. a county or municipal charter;

8 4. a memorandum of understanding or a master agreement  
9 to which a majority of the county boards of education and the State Department of  
10 Education are signatories;

11 5. an ordinance;

12 6. a rule, resolution, or bylaw;

13 7. an executive order of the Governor; or

14 8. an executive order of the chief executive authority of a  
15 political subdivision of the State.

16 (2) “Public body” includes:

17 (i) any multimember board, commission, or committee appointed by  
18 the Governor or the chief executive authority of a political subdivision of the State, or  
19 appointed by an official who is subject to the policy direction of the Governor or chief  
20 executive authority of the political subdivision, if the entity includes in its membership at  
21 least two individuals not employed by the State or the political subdivision;

22 (ii) any multimember board, commission, or committee that:

23 1. is appointed by:

24 A. an entity in the Executive Branch of the State  
25 government, the members of which are appointed by the Governor, and that otherwise  
26 meets the definition of a public body under this subsection; or

27 B. an official who is subject to the policy direction of an entity  
28 described in item A of this item; and

1                                   2.     includes in its membership at least two individuals who  
2 are not members of the appointing entity or employed by the State; and

3                                   (iii)   The Maryland School for the Blind.

4                                   (3)    “Public body” does not include:

5                                   (i)     any single member entity;

6                                   (ii)    any judicial nominating commission;

7                                   (iii)   any grand jury;

8                                   (iv)    any petit jury;

9                                   (v)     the Appalachian States Low Level Radioactive Waste  
10 Commission established in § 7–302 of the Environment Article;

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

13                                  [(vii) the Governor’s cabinet, the Governor’s Executive Council as  
14 provided in Title 8, Subtitle 1 of the State Government Article, or any committee of the  
15 Executive Council;]

16                                  [[viii] (VII) a local government’s counterpart to the Governor’s  
17 cabinet, Executive Council, or any committee of the counterpart of the Executive Council;

18                                  [(ix) (VIII) except as provided in paragraph (1) of this subsection, a  
19 subcommittee of a public body as defined in paragraph (2)(i) of this subsection;

20                                  [(x) (IX)    the governing body of a hospital as defined in § 19–301 of  
21 the Health – General Article; [and] OR

22                                  [(xi) (X)     a self–insurance pool that is established in accordance  
23 with Title 19, Subtitle 6 of the Insurance Article or § 9–404 of the Labor and Employment  
24 Article by:

25                                   1.     a public entity, as defined in § 19–602 of the Insurance  
26 Article; or

27                                   2.     a county or municipal corporation, as described in § 9–404  
28 of the Labor and Employment Article.

29 3–206.

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

3 (ii) any written statement made under [§ 3-305(d)(2)(ii)] §  
4 **3-305(E)(2)(II)** of this title; and

5 3-305.

6 (a) The exceptions in [subsection] **SUBSECTIONS (b) AND (C)** of this section shall  
7 be strictly construed in favor of open meetings of public bodies.

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

10 (1) discuss:

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

14 (ii) any other personnel matter that affects one or more specific  
15 individuals;

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

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

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

22 (5) consider the investment of public funds;

23 (6) consider the marketing of public securities;

24 (7) consult with counsel to obtain legal advice;

25 (8) consult with staff, consultants, or other individuals about pending or  
26 potential litigation;

27 (9) conduct collective bargaining negotiations or consider matters that  
28 relate to the negotiations;

29 (10) discuss public security, if the public body determines that public  
30 discussion would constitute a risk to the public or to public security, including:

- 1 (i) the deployment of fire and police services and staff; and
- 2 (ii) the development and implementation of emergency plans;
- 3 (11) prepare, administer, or grade a scholastic, licensing, or qualifying  
4 examination;
- 5 (12) conduct or discuss an investigative proceeding on actual or possible  
6 criminal conduct;
- 7 (13) comply with a specific constitutional, statutory, or judicially imposed  
8 requirement that prevents public disclosures about a particular proceeding or matter; or
- 9 (14) discuss, before a contract is awarded or bids are opened, a matter  
10 directly related to a negotiating strategy or the contents of a bid or proposal, if public  
11 discussion or disclosure would adversely impact the ability of the public body to participate  
12 in the competitive bidding or proposal process.

13 **(C) SUBJECT TO SUBSECTION (E) OF THIS SECTION, THE GOVERNOR'S**  
14 **CABINET AND THE GOVERNOR'S EXECUTIVE COUNCIL, AS PROVIDED IN TITLE 8,**  
15 **SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE, OR ANY COMMITTEE OF THE**  
16 **EXECUTIVE COUNCIL MAY MEET IN CLOSED SESSION FOR CAUSE.**

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

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

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

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

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

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

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

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

1 (a) This section does not:

2 (1) require any change in the form or content of the Journal of the Senate  
3 of Maryland or Journal of the House of Delegates of Maryland; or

4 (2) limit the matters that a public body may include in its minutes.

5 (b) (1) Subject to paragraphs (2) and (3) of this subsection, as soon as  
6 practicable after a public body meets, it shall have minutes of its session prepared.

7 (2) A public body need not prepare minutes of an open session if:

8 (i) live and archived video or audio streaming of the open session is  
9 available; or

10 (ii) the public body votes on legislation and the individual votes  
11 taken by each member of the public body who participates in the voting are posted promptly  
12 on the Internet.

13 (3) The information specified under paragraph (2) of this subsection shall  
14 be deemed the minutes of the open session.

15 (c) (1) The minutes shall reflect:

16 (i) each item that the public body considered;

17 (ii) the action that the public body took on each item; and

18 (iii) each vote that was recorded.

19 (2) If a public body meets in closed session, the minutes for its next open  
20 session shall include:

21 (i) a statement of the time, place, and purpose of the closed session;

22 (ii) a record of the vote of each member as to closing the session;

23 (iii) a citation of the authority under § 3–305 of this subtitle for  
24 closing the session; and

25 (iv) a listing of the topics of discussion, persons present, and each  
26 action taken during the session.

27 (3) (i) **[A] SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,**  
28 A session may be recorded by a public body.

1                   **(II) EACH OPEN SESSION OF THE GOVERNOR’S CABINET AND**  
2 **THE GOVERNOR’S EXECUTIVE COUNCIL, AS PROVIDED IN TITLE 8, SUBTITLE 1 OF**  
3 **THE STATE GOVERNMENT ARTICLE, AND ANY COMMITTEE OF THE EXECUTIVE**  
4 **COUNCIL SHALL BE STREAMED LIVE.**

5                   **[(ii)] (III)** Except as otherwise provided in paragraph (4) of this  
6 subsection, the minutes and any recording of a closed session shall be sealed and may not  
7 be open to public inspection.

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

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

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

14                   (iii) on request of a person or on the public body’s own initiative, if a  
15 majority of the members of the public body present and voting vote in favor of unsealing  
16 the minutes and any recording.

17                   (d) Except as provided in subsection (c) of this section, minutes of a public body  
18 are public records and shall be open to public inspection during ordinary business hours.

19                   (e) (1) A public body shall keep a copy of the minutes of each session and any  
20 recording made under subsection (b)(2)(i) or (c)(3)(i) of this section for at least 5 years after  
21 the date of the session.

22                   (2) To the extent practicable, a public body shall post online the minutes or  
23 recordings required to be kept under paragraph (1) of this subsection.

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