

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 920
(Delegate Carr)
Health and Government Operations

Open Meetings Act - Definition - Administrative Function

This bill alters the definition of “administrative function” as it applies to Maryland’s Open Meetings Act (OMA) to exclude any personnel matter that affects one or more specific individuals. Thus, such matters do not fall under OMA’s administrative function exclusion.

Fiscal Summary

State Effect: None. The change is procedural in nature and does not directly affect State finances.

Local Effect: None. The change does not directly affect local government finances.

Small Business Effect: None.

Analysis

Current Law:

Open Meetings Act, Generally

Under OMA, with limited exceptions, a public body must (1) meet in open session in places reasonably accessible to potential attendees and (2) provide reasonable advance notice of the time and location of meetings, including, when appropriate, whether any portion of a meeting will be in closed session. 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.

Administrative Function Exclusion

OMA generally does not apply to a public body when carrying out an administrative function. “Administrative function,” as defined under OMA, means the administration of a law of the State, a law of a political subdivision of the State, or a rule, regulation, or bylaw of a public body. It does not include an advisory, judicial, legislative, quasi-judicial, or quasi-legislative function.

OMA also does not generally apply to a public body when carrying out a judicial or quasi-judicial function as defined under OMA.

Personnel Matters

A public body may meet in closed session or adjourn an open session to a closed session only under specified circumstances, including to discuss (1) 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 (2) any other personnel matter that affects one or more specific individuals.

According to the *Open Meetings Act Manual* prepared by the Office of the Attorney General (OAG), the Open Meetings Act Compliance Board has found that discussions about particular employees or appointees sometimes also fall within OMA’s administrative function exclusion; thus, in such circumstances, OMA generally does not apply, with the exception of specified disclosure requirements that apply when a public body closes an open meeting to address administrative matters.

Closed Sessions, Generally

A public body may not meet in closed session unless a majority of the members of the public body present and voting vote in favor of closing the session. Before a public body meets in closed session, the presiding officer must conduct a recorded vote on the closing of the session and make a written statement of the reason for closing of the meeting, including the citation of the authority to close the session and a listing of the topics to be discussed. The written statement must be a matter of public record, and the public body must keep a copy of the written statement for at least one year after the date of the session.

If a public body recesses an open session to carry out an administrative function in a meeting that is not open to the public, the minutes for the public body's next meeting must include (1) a statement of the date, time, place, and persons present at the administrative function meeting and (2) a phrase or sentence identifying the subject matter discussed at the administrative function meeting.

A public body may not meet in closed session unless at least one member of the body has been designated to receive training on the requirements of the open meetings law. If a designated individual cannot be present at an open meeting at which the public body votes to hold a closed session, the body must complete a specified compliance checklist developed by OAG and include the checklist in the meeting minutes.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Department of Commerce; Maryland Environmental Service; Maryland Municipal League; Governor's Office; Secretary of State; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); University System of Maryland; Maryland Department of Agriculture; Department of Budget and Management; Maryland Department of Health; Department of Housing and Community Development; Department of Human Services; Department of Juvenile Services; Department of Natural Resources; Board of Public Works; Department of State Police; Maryland Department of Transportation; State Ethics Commission; Maryland Insurance Administration; Public Service Commission; Office of the Attorney General; Maryland State Department of Education; Baltimore, Charles, Frederick, and Montgomery counties; City of Havre de Grace; Department of Legislative Services

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