

**BOARD OF TRUSTEES OF THE
EMPLOYEES' RETIREMENT SYSTEM OF THE
CITY OF BALTIMORE**

OPEN AND CLOSED MEETING POLICY

Adopted October 18, 2001.

Amended February 19, 2015; January 18, 2018

The Board of Trustees ("Board") of the Employees' Retirement System ("Retirement System") hereby establishes the following Open and Closed Meeting Policy to insure that meetings of the Board and its constituent committees are conducted in compliance with the Open Meetings Act, codified as §§ 3-101 through 3-501 of the General Provisions Article of the Annotated Code (the "Act"). References to the Act reflect recodification effective July 1, 2017.

In first enacting and later amending the Act, the Maryland General Assembly, as a matter of State of Maryland public policy, found that it is essential to the maintenance of a democratic society that, except in special and appropriate circumstances:

1. public business be performed in an open and public manner; and
2. citizens be allowed to observe:
 - a. the performance of public officials; and
 - b. the deliberations and decisions that the making of public policy involves.

Md. Code, G.P. Art. § 3-102(a).

The Board, which was established pursuant to the City Charter and Article 22 of the Baltimore City Code, is governed by the Act, which covers multi-member public bodies created by law. Therefore, meetings of the Board are governed by the Act. In addition, inasmuch as the standing Investment Committee for the Board is established by Board resolution, the Investment Committee is also considered a public body under section 3-101(h)(1)(ii) of the Act and its meetings are governed by the Act. References to the "Board" in this Policy shall include the Board and the Investment Committee.

1. Scope of the Open Meetings Act.

A. The Board will meet in open session and will be governed by the Act. However, the Board may, under certain circumstances following a specific process (detailed in Section 7), meet in closed session. Md. Code, G.P. Art. § 3-305.

B. The Act is not applicable to meetings held by the Executive Director acting as a single member entity. Md. Code, G.P. Art. § 3-101(h)(3).

C. The Board, as a public body as defined in the Act, will be bound by the statutory definition of “meet”, defined in section 3-101(g) of the Act “to convene a quorum of a public body to consider or transact public business.”

i. There is no distinction between meetings that are “formal” and “informal”, such as work sessions or pre-meetings.

ii. A conference telephone call in which a quorum of members is on the line is a “meeting” and compliance with the Act is required. Open Meetings Act Manual, 1-8 (9th ed. 2016).

iii. From time to time, the Board may attend an educational or team-building retreat at which no Board business is conducted. So long as the retreat is not a device to set the Board's agenda or discuss specific matters that are to be dealt with by the Board, the retreat is not a meeting within the meaning of the Act. Open Meetings Act Manual, 1-11 (9th ed. 2016).

2. Social Gatherings.

A. The Act does not apply to a social gathering of the Board or Investment Committee when a quorum of the bodies might be together at the same time if the occasion was not intended to circumvent the Act and the members were simply engaged in social conversation and did not engage in any phase of the Board's or Investment Committee's own decision making process. Md. Code, G.P. Art. § 3-103(a)(2).

B. Trustees of the Board are prohibited from attending dinners or other social gatherings where their attendance would constitute a "meeting," as defined in section 3-101(g) of the Act.

C. A gathering to which is invited a quorum of the Investment Committee of the Board or a quorum of the Board itself must be treated by the invitees potentially as an “open meeting”, even if it possible that a quorum will not actually attend.

D. Upon being invited to a gathering which could possibly be an “open meeting” by a current or potential investment manager or other vendor doing business with the Retirement System, the invitee dealing with the vendor must insure that either (1) the requirements of the Act be followed, or (2) the vendor be

informed that Trustees may not legally participate in or hear a presentation relating to the business of the Retirement System during the gathering.

3. Notice Requirements.

A. The Board will give "reasonable advance notice" of their meetings by written notification to the Department of Legislative Reference. Md. Code, G.P. Art. § 3-302(a). Notice will be provided no less than 7 days before any meeting. Baltimore City Code, Article 1 § 6-4(a).

B. Notice will be given even if the meeting may permissibly be closed under one of the Act's exemptions detailed in Section 7 of this Policy.

C. The written notice will include the date, time, and place of its meeting and will state if the Board intends to conduct all or part of its meeting in a closed session Md. Code, G.P. Art. § 3-302(b). In addition, effective October 1, 2016, an agenda will be provided. Md. Code, G.P. Art. § 3-302.1.

D. The Board will give notice of future meetings as soon as practicable after the Board has fixed the date, time and place of the next meeting.

E. If events require the prompt convening of a previously unscheduled emergency meeting, the Board will give written notice to the Department of Legislative Reference as quickly as possible.

4. Decorum.

The Board has adopted and will enforce the following rules regarding the conduct of persons attending its meetings.

A. Members of the public, including employees, retirees, employee union representatives, and the press, are allowed to attend and observe the open meetings of the Board.

B. Visitors must sign in on the registration sheet outside the Board's meeting room. A visitor must print his name and organization. The names of all visitors will be included in the minutes of the Board meeting.

C. These rules do not authorize a member of the public attending an open session to participate in the session. However, at the discretion of the Board, the public may be given an opportunity to comment at the conclusion of the Board's discussion of a particular item.

D. A person attending an open session of the Board may not engage in any conduct that disrupts the conduct of the session or that interferes with the right of members of the public to attend and observe the session.

E. If anyone in attendance engages in disruptive conduct, the Board may order the disruptive individual removed from the session. Md. Code, G.P. Art. § 3-303(c)(1). Further, under section 3-303(c)(2) of the Act, unless the Board has acted maliciously, they are not liable for having an individual removed.

F. The Board accepts the Act policy that refers “to the ability of the public, its representatives, and the media to attend, report on, and broadcast meetings of public bodies.” Md. Code, G.P. Art. § 3-102(b)(1). However, the Board requires that anyone wishing to record, broadcast, videotape, televise, or photograph its meetings must notify the Executive Director in advance of the open meeting.

G. Inasmuch as every public body subject to the Act is required to “adopt and enforce reasonable rules regarding the conduct of persons attending its meetings and the videotaping, televising, photographing, broadcasting, or recording of its meetings,” section 3-303(b) of the Act, the Board adopts the following rules regarding the videotaping, televising, photographing, broadcasting, or recording of its meetings, assuming the member of the public has provided the required notification:

i. A member of the public, including any representative of the news media, may record discussions of the Board at an open session by means of a tape recorder or any other recording device if the device:

a. is operated from the person’s seat; and

b. does not create a noise that disturbs members of the Board or other persons attending the session.

ii. A member of the public, including any representative of the news media, may photograph or videotape the proceedings of the Board at an open session by means of any type of camera if the camera:

a. is operated from a fixed position that does not block the view of any other person;

b. is operated without flash or any other form of artificial light that may disturb members of the Board; and

c. does not create a noise that disturbs members of the Board or other persons attending the session.

- iii. A representative of the news media may broadcast or televise the proceedings of the Board at an open session if the equipment used:
 - a. is operated from a fixed position that does not block the view of any other person;
 - b. is operated without any form of artificial light that may disturb members of the Board; and
 - c. does not create a noise that disturbs members of the Board or other persons attending the session.
- iv. Except with unanimous consent of all members of the Board, no microphone may be placed on tables used by members of the Board or its staff.
- v. A person may not move about the room when using a recording device, camera, or broadcasting or televising equipment.
- vi. A person may not move a recording device, camera, or broadcasting or televising equipment from its initial location during the course of an open session, except during a recess.
- vii. A representative of the news media who desires arrangements for the use of a recording device, camera, or broadcasting or televising equipment in a manner not consistent with the provisions of this section may request such special arrangement in advance by contacting the Executive Director of the Employees' Retirement System.
- viii. A recording of an open session made by a member of the public, or any transcript derived from such a recording, may not be deemed a part of the record of any proceeding of the Board.

5. Procedures for Closing Meetings.

A. The Act does not establish rules of parliamentary procedure. Therefore, the Board will continue its practice of following Robert's Rules of Order in the conduct of the Board meetings.

B. The Board shall adhere to the following formal steps mandated in the Act for meeting in closed session:

- i. First, the Board will provide advance notice which includes the date, time, and place of the Board's meeting along with a statement that part or all of the meeting may be conducted in closed session. Md. Code,

G.P. Art. § 3-302 (b). Effective October 1, 2016, the Board will provide an agenda which indicates whether the Board expects to close any portion of the meeting. Md. Code, G.P. Art. § 3-302.1

ii. The Board will then conduct a recorded vote on the closing of the session. Md. Code, G.P. Art. § 3-305(d)(2)(i). Unless a *majority* of the members of the Board are present *and* vote in favor of closing the session, the Board may not meet in closed session. Md. Code, G.P. Art. § 3-305(d)(1). In accordance with customary parliamentary procedures, this vote will occur on a motion, properly seconded, to close the meeting. The motion will state the legal basis for the proposed closing. The meeting may only be closed for one or more of the 14 reasons set forth in section 3-305 of the Act and detailed in Section 7 of this Policy.

iii. Prior to the start of the closed session, the Chair of the Board must have a written statement prepared which states the reason for closing the meeting. This statement must include the specific provision under the Act that allows for the closing of the meeting and the topics to be discussed at the meeting. Md. Code, G.P. Art. § 3-305(d)(2)(ii). An oral recitation of this statement will not satisfy the written requirement of the Act.

iv. The written statement which invokes a particular exception of the Act as a reason for closing the meeting should provide sufficient detail about the subject of the closed session for those in attendance to make an informed judgment about whether to close the meeting.

v. The Board shall make this written statement available as a matter of public record. Md. Code, G.P. Art. § 3-305(d)(4).

vi. If there are objections from anyone to the closing of a meeting, the Board shall send a copy of the written statement to the Open Meetings Compliance Board. Md. Code, G.P. Art. § 3-305(d)(3).

vii. Effective July 1, 2017, the Board will not close a meeting unless it has designated a Board member to receive training on the Act. Md. Code, G.P. Art. § 3-213.

6. Minutes.

A. The Board will keep written minutes of all their meetings, open and closed.

B. These minutes shall be prepared as soon as possible after the meeting. Md. Code, G.P. Art. § 3-306(b)(1). Minutes must be filed with the Department of Legislative Reference by the earlier of 7 days after the next regularly scheduled meeting or 60 days. Baltimore City Code, Article 1 § 6-5.

- C. The minutes will contain the following information.
- i. Each item considered. The description in the minutes of an “item” will be sufficient so that a member of the public who reads the minutes of an open meeting (or of a closed meeting, if the minutes are later released) will be able to understand the nature of the issue.
 - ii. The action taken on each item.
 - iii. Each recorded vote.

Md. Code, G.P. Art. § 3-306(c)(1)

D. Written minutes and tape recordings of open meetings shall be maintained and preserved by the Board for at least 5 years.

E. If the Board meets in a closed session, it will also keep minutes of that session.

F. The Board may tape record its closed session.

G. With the exceptions noted below, written minutes and tape recordings of a closed meeting will remain sealed and the Board shall maintain and preserve these minutes and recordings for at least 5 years.

H. On the request of a person or on the Board’s own initiative, the Board, by majority vote, may release the written minutes and any tape recordings of a closed meeting. Md. Code, G.P. Art. § 3-306(c)(4)(iii).

I. When the Board has closed a meeting to discuss the investment of public funds, the minutes and any tape recording of that portion of the closed session must and will be made available to the public after the transactions have occurred. Md. Code, G.P. Art. § 3-306(c)(4)(i)..

J. If the Board holds a closed meeting, the minutes of the next open meeting will include:

- i. a statement of the time, place and purpose of the closed session;
- ii. a record of the vote of each member on the motion to close the session;
- iii. a citation of the provision under the Act for closing the session; and

- iv. a listing of the topics of discussion, persons present and each action taken during the session for the purpose of describing in general terms what transpired at the closed meeting without disclosing any specific information intended to be kept private by the Act.

Md. Code, G.P. Art. § 3-306(c)(2).

K. Minutes of open meetings and unsealed minutes of closed meetings of the Board are public records and shall be open to public inspection during ordinary business hours. Md. Code, G.P. Art. § 3-306(d).

L. Effective October 1, 2017, to the extent practicable, the Board will post minutes online. Md. Code, G.P. Art. § 3-306(e)(2).

7. Authority to Close a Meeting.

A. The Board will hold a closed meeting only for one or more of the following 14 reasons. Md. Code, G.P. Art. § 3-305(b). However, the Board will see to it that all of these 14 exceptions are “strictly construed in favor of open meetings....” Md. Code, G.P. Art. § 3-305(a). Meetings may be closed:

- i. to discuss:
 - a. the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation or performance evaluation of appointees, employees or officials over whom the Board has jurisdiction; or
 - b. any other personnel matter that affects one or more specific individuals;
- ii. to protect the privacy or reputation of individuals with respect to a matter that is not related to public business;
- iii. to consider the acquisition of real property for a public purpose and matters directly related thereto;
- iv. to consider a matter that concerns the proposal for a business or industrial organization to locate, expand or remain in the State;
- v. to consider the investment of public funds;
- vi. to consider the marketing of public securities;
- vii. to consult with counsel to obtain legal advice;

- viii. to consult with staff, consultants or other individuals about pending or potential litigation;
- ix. to conduct collective bargaining negotiations or consider matters that relate to the negotiations;
- x. to discuss public security if the public body determines that public discussion would constitute a risk to the public security, including:
 - a. the development of fire and police services and staff; and
 - b. the development and implementation of emergency plans;
- xi. to prepare, administer or grade a scholastic, licensing or qualifying examination;
- xii. to conduct or discuss an investigative proceeding on actual or possible criminal conduct;
- xiii. to comply with a specific constitutional, statutory or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter; or
- ixv. before a contract is awarded or bids are opened, to discuss a matter directly related to a negotiation strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.

B. If the Board does invoke one of these exceptions, it will limit its discussion to that topic only.

- i. No other matters will be discussed, even informally. Md. Code, G.P. Art. § 3-305(c).
- ii. The Board may not avoid an open meeting simply because a topic is controversial or potentially embarrassing.

C. The Board may take final action at a session that is properly closed to the public under one of the 14 exceptions. For example, the Board may vote on a settlement proposal in pending litigation in closed session.

8. Judicial Enforcement.

A. Any person who believes that the Board has violated the Act may file a written complaint with the Open Meetings Compliance Board. Md. Code, G.P. Art. § 3-205(a).

B. Anyone who believes that he or she has been adversely affected by the Board's failure to comply with the Act may file suit in Circuit Court within 45 days of the alleged violation. Md. Code, G.P. Art. § 3-401(b).

C. If the Board willfully conducts a meeting with knowledge that the meeting is being held in violation of the Act, the Board is subject to a civil penalty not to exceed (1) \$250 for the first violation or (2) \$1,000 for each subsequent violation that occurs within 3 years after the first violation. Md. Code, G.P. Art. § 3-402.

9. Open Meetings Act Training.

A. The Board will designate a Board member to complete statutorily-required training on the Open Meetings Act. See Md. Code, G.P. Art. § 3-213.

B. The designated person must be present at each open meeting. Md. Code, G.P. Art. § 3-213(d). Otherwise, the Board will complete a compliance checklist and include it as part of the minutes.