

**LAWS OF MARYLAND RELATING TO PUBLIC LIBRARIES
2010 EDITION**

**PART I
STATUTORY PROVISIONS**

EDUCATION

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**SUBTITLE 2. APPOINTMENT, SUSPENSION, AND DISMISSAL OF
PERSONNEL**

§ 6-204. Credit for employees of Department for previous employment in school system.

(a) *Credit for previous employment.*- For the purpose of establishing compensation rates and the basic rates for vacation and sick leave credit earnings, all professional personnel who previously were employed by a county school system or the public library system in this State and who are appointed to positions in the Department shall be given credit as employees of the Department for the years of service as employees of the county school system or public library system from which they transferred.

(b) *Applicability to those employed before July 1, 1972.*- For the purpose of establishing vacation and sick leave credit earnings, this section applies to all professional personnel employed by the Department before July 1, 1972.

[An. Code 1957, art. 77, § 31; 1978, ch. 22, § 2.]

DIVISION IV. OTHER EDUCATION PROVISIONS

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SUBTITLE 1. STATE LIBRARY AGENCIES

§ 23-101. Findings and policy of State.

- (a) *Findings.*- The General Assembly finds:
 - (1) That public library resources and services are essential components of the educational system; and
 - (2) That libraries stimulate awareness and understanding of critical social issues, and assist individuals in reaching their highest potential for self-development.
- (b) *Policy.*- It is the policy of this State:
 - (1) To continue the orderly development and maintenance of library facilities and services throughout this State, in collaboration with the counties; and
 - (2) To develop coordinated programs and services among libraries and institutions to:
 - (i) Provide the widest possible access to the library and information resources of this State; and
 - (ii) Insure more effective and economical services to all library users.

[An. Code 1957, art. 77, § 162; 1978, ch. 22, § 2.]

§ 23-102. Division of Library Development and Services established.

There is a Division of Library Development and Services in the Department. The Division is the central State library agency.

[An. Code 1957, art. 77, § 164; 1978, ch. 22, § 2; 2006, ch. 494.]

Effect of amendments. Chapter 494, Acts 2006, effective July 1, 2006, reenacted this section without change.

§ 23-103. Staff of Division.

(a) *Assistant Superintendent for Libraries - Position and appointment.*- The head of the Division of Library Development and Services is the Assistant Superintendent for Libraries who is appointed by the State Board on the recommendation of the State Superintendent.

(b) *Assistant Superintendent for Libraries - Qualifications.*- The Assistant Superintendent for Libraries shall:

- (1) Hold an advanced degree in library and information service;
- (2) Have administrative experience in libraries; and
- (3) Have any other qualifications the State Superintendent considers necessary.

(c) *Other staff; compensation.*-

- (1) The Division may employ the professional and clerical staff provided in the State budget.
- (2) Each employee of the Division is entitled to the salary provided in the State budget.

[An. Code 1957, art. 77, §§ 164, 165; 1978, ch. 22, § 2.]

§ 23-104. Authority of State Board and State Superintendent.

(a) *In general.*- In addition to the other powers granted and duties imposed by this article, the State Board has the powers and duties set forth in this section.

(b) *General powers and duties.*- The State Board shall exercise general direction and control of library development in this State and may:

- (1) Adopt rules and regulations necessary to administer this title;
- (2) After considering the recommendations of the Advisory Council on Libraries, establish library policies and procedures for the statewide system of libraries;
- (3) Consider the library needs of this State and recommend to the Governor and the General Assembly desirable legislation; and
- (4) With the approval of the Governor, accept, administer, and spend any appropriation, gift, or grant for library purposes from the federal government or from any other person.

(c) *Certification of library personnel.*- In accordance with the bylaws, rules, and regulations of the State Board, the State Superintendent shall certificate professional library personnel.

(d) *Reports.*- Each year the State Board shall report to the Governor and the people of this State on the support, condition, progress, and needs of libraries.

(e) *Approval of county public library capital projects for State funding.*- The State Board shall approve county public library capital projects for State funding in accordance with § 23-510 of this title.

[An. Code 1957, art. 77, §§ 163, 175; 1978, ch. 22, § 2; 2006, ch. 494.]

Effect of amendments. Chapter 494, Acts 2006, effective July 1, 2006, added (e).

§ 23-105. Powers and duties of Division.

(a) *In general.*- In addition to any other powers granted and duties imposed by this title, and subject to the authority of the State Board, the Division of Library Development and Services has the powers and duties set forth in this section.

(b) *General powers and duties.*- The Division of Library Development and Services shall:

(1) Provide leadership and guidance for the planning and coordinated development of library and information service in this State;

(2) Develop statewide public and school library services and networks, resource centers, and other arrangements to meet the library and information needs of this State;

(3) Provide professional and technical advice on improving library services in this State to:

(i) Public and school library officials;

(ii) State government agencies; and

(iii) Any other person;

(4) (i) Collect library statistics and other data;

(ii) Identify library needs and provide for needed research and studies of them;

(iii) Publish and distribute findings in these areas; and

(iv) Coordinate library services with other information and education services and agencies;

(5) Administer federal and State funds appropriated to it by the State for library purposes;

(6) (i) Develop and recommend professional standards and policies for libraries; and

(ii) Establish requirements and procedures for the certification of librarians and library personnel;

(7) Provide:

(i) Specialized library service to the blind and other physically handicapped individuals in this State; and

(ii) Other desirable specialized library services;

(8) Encourage, advise, and assist in establishing, operating, and coordinating libraries at State institutions and agencies and administer the operation of library and information services for the Department;

(9) Administer the State grant program for county public library capital projects, in

accordance with § 23-510 of this title;

(10) Adopt guidelines for the administration of public libraries and recommend to the State Board rules and regulations to implement this title;

(11) Cooperate with national library agencies and those of any other state; and

(12) Perform any other duty necessary for its proper operation.

[An. Code 1957, art. 77, § 166; 1978, ch. 22, § 2; 2000, ch. 61, § 1; 2006, ch. 494; 2008, ch. 36, § 6.]

Effect of amendments. Chapter 494, Acts 2006, effective July 1, 2006, added (b)(9) and made related changes.

Editor's note. Pursuant to § 6 of ch. 36, Acts 2008, "of this title" was substituted for "of this article" in (b)(9).

§ 23-106. Maryland Advisory Council on Libraries.

(a) *Established.*- There is a Maryland Advisory Council on Libraries.

(b) *Composition; term; vacancies; compensation.*-

(1) The Advisory Council consists of 12 members, 7 of whom are appointed by the Governor. Each member is entitled to participate fully and equally in the activities of the Council.

(2) Each member shall:

(i) Be a resident of this State;

(ii) Be an individual of ability and integrity who is experienced in public or library affairs; and

(iii) Represent the interests of the citizens of this State in better library services.

(3) Of the appointed members:

(i) Five shall be selected from the public at large;

(ii) One shall be a professional librarian; and

(iii) One shall be a library trustee.

(4) The following officials serve ex officio and each may designate someone to serve in his place:

(i) The Secretary of Higher Education;

(ii) The President of the Board of Trustees of Enoch Pratt Free Library;

(iii) The President of the Maryland Library Association;

(iv) The Dean of the University of Maryland College of Library and Information Services; and

(v) The President of the Maryland Educational Media Organization.

(5) (i) Each appointed member serves for a term of 5 years and until a successor is appointed and qualifies. These terms are staggered as required by the terms of the members serving on July 1, 1978.

(ii) An appointed member may not serve more than two consecutive terms.

- (iii) A member appointed to fill a vacancy in an unexpired term serves only for the remainder of that term and until a successor is appointed and qualifies.
- (6) Each member of the Advisory Council:
 - (i) Serves without compensation; and
 - (ii) Is entitled to reimbursement for expenses in accordance with the Standard State Travel Regulations.
- (c) *Chairman; officers; staff; meetings.*-
 - (1) Each year:
 - (i) The Governor shall appoint a member of the Advisory Council as its Chairman; and
 - (ii) The Advisory Council shall elect one of its members as its vice chairman.
 - (2) The Assistant Superintendent for Libraries shall:
 - (i) Serve as secretary to the Advisory Council;
 - (ii) Record the proceedings of the Council; and
 - (iii) Provide necessary staff services.
 - (3) The Advisory Council shall meet at least once a year at the times and places its Chairman designates.
 - (4) Seven members of the Advisory Council are a quorum and at least 7 affirmative votes are required for any recommendation to:
 - (i) The Division of Library Services;
 - (ii) The State Superintendent;
 - (iii) The State Board; or
 - (iv) The Governor.
- (d) *Duties.*- The Advisory Council shall:
 - (1) Gather information on the needs of libraries throughout this State;
 - (2) Advise the Division of Library Development and Services, the State Superintendent, the State Board, and the Governor on library matters; and
 - (3) Promote improvement of library services in this State.
- (e) *Funds.*- The Advisory Council may be funded annually as provided in the budget of the Division of Library Development and Services.

[An. Code 1957, art. 77, § 167; 1978, ch. 22, § 2; 1979, ch. 65; 1982, ch. 138; 1988, ch. 246, § 2; 1989, ch. 5, § 1.]

§ 23-107. Circulation records.

- (a) *Inspection, use, or disclosure prohibited.*- Subject to the provisions of subsection (b) of this section, a free association, school, college or university library in this State shall prohibit inspection, use, or disclosure of any circulation record or other item, collection, or grouping of information about an individual that:
 - (1) Is maintained by a library;
 - (2) Contains an individual's name or the identifying number, symbol, or other identifying particular assigned to the individual; and

- (3) Identifies the use a patron makes of that library's materials, services, or facilities.
- (b) *Exceptions.*- A free association, school, college, or university library in the State shall permit inspection, use, or disclosure of the circulation record of an individual only in connection with the library's ordinary business and only for the purposes for which the record was created.

[1988, ch. 233; 1990, ch. 635.]

SUBTITLE 2. RESOURCE CENTERS AND COOPERATIVE PROGRAMS

§ 23-201. State Library Resource Center.

- (a) *Established.*- The Central Library of the Enoch Pratt Free Library System is the State Library Resource Center.
- (b) *Purpose.*- The State Library Resource Center shall provide and expand access to specialized library materials and services that are necessary for coordinated, efficient, and economical library services in this State.

[An. Code 1957, art. 77, § 168; 1978, ch. 22, § 2.]

§ 23-202. Regional resource centers.

- (a) *Establishment.*- The boards of library trustees of at least three public library systems outside the standard metropolitan statistical areas defined by the United States Bureau of the Census may request the Department to establish and maintain a regional resource center.
- (b) *Purpose.*- Each regional resource center shall provide, through mutual cooperation and coordination, books, information, and other material and service resources that an individual library cannot provide adequately by itself.
- (c) *Standards for establishing; location of center.*-
- (1) A region to be served by a regional resource center shall have a population of at least 100,000.
 - (2) Subject to approval by the Department, the boards of library trustees of the participating library systems shall designate the library to serve as the resource center.
 - (3) If possible, the library selected as the regional resource center shall be:
 - (i) The strongest library in the region; and
 - (ii) Located so as to be of greatest service to the entire region.

(d) *Board of advisors.*-

- (1) There is a board of advisors for each regional resource center.
- (2) The board of advisors consists of two individuals selected by the board of trustees of each participating library system to represent its library.
- (3) The board of advisors for each regional resource center shall:
 - (i) Gather information on the resource needs of its region and this State;
 - (ii) Before State funds are distributed to it, make an annual report to the Department and the State Advisory Council on Libraries that evaluates and makes recommendations on the operation of the center;
 - (iii) Recommend to the board of trustees of the library designated as the regional resource center and to the Department policies and procedures for the development and use of the regional resource center;
 - (iv) Promote the use of the regional resource center;
 - (v) Recommend the purchase, condemnation, rental, use, sale, or conveyance of property for any purpose valid under this section; and
 - (vi) Recommend plans for the regional resource centers, which may include the use of facilities of participating libraries, additions to the facilities of participating libraries, or new facilities separate from the existing facilities of participating libraries.

(e) *Administration of center.*-

- (1) The head of each regional resource center is the administrator of the library designated as the center.
- (2) The administrator shall operate the regional resource center under standards adopted by the Department.
- (3) The policies and procedures of the regional resource center shall be:
 - (i) Recommended by the board of trustees of the library designated as the center; and
 - (ii) Approved by the board of advisors of the center.
- (f) *Duties of regional resource centers.*- Each regional resource center shall:
 - (1) Make interlibrary loans of books and materials;
 - (2) Supply collections and exhibits of specialized materials;
 - (3) Provide consultant services;
 - (4) Organize inservice training for library staffs; and
 - (5) Develop and operate cooperative services among libraries.

[An. Code 1957, art. 77, § 169; 1978, ch. 22, § 2.]

§ 23-203. Metropolitan cooperative service programs.

- (a) *Authorized.*- The board of library trustees of any public library system that is not participating in a regional resource center may participate in a metropolitan cooperative service program.
- (b) *Standards.*- Each metropolitan cooperative service program shall conform to standards adopted by the State Board.

(c) *Annual report.*- Each metropolitan cooperative service program shall make an annual report of its operations to the Department and the State Advisory Council on Libraries.

[An. Code 1957, art. 77, § 169; 1978, ch. 22, § 2.]

§ 23-204. Evaluation of regional resource centers and metropolitan cooperative service programs.

The Department periodically shall evaluate the effectiveness of the services performed by each regional resource center and metropolitan cooperative service program and may request any reports and information necessary for this purpose.

[An. Code 1957, art. 77, § 169; 1978, ch. 22, § 2.]

§ 23-205. Funding for programs.

(a) *Operating funds to be included in budget; review by Governor and General Assembly.*- Each year, the Department may include in its budget operating funds for:

- (1) The State Library Resource Center;
- (2) Each regional resource center; and
- (3) Each metropolitan cooperative service program.

(b) *Capital expenses.*-

(1) The State shall pay all capital expenses for:

- (i) The State Library Resource Center; and
- (ii) Each regional resource center.

(2) Before any money is spent under this subsection, the appropriate board of library trustees shall:

- (i) Have the project approved by the Department;
- (ii) Through the Department, submit the request to the Department of Budget and Management for consideration under Subtitle 6, Title 3 of the State Finance and Procurement Article; and
- (iii) Agree to reimburse the Department an amount the Department determines if the facility ceases to be used for a resource center or cooperative service program.

(c) *Funding for expenses.*-

(1) Each year each participating regional resource center shall receive a minimum amount of funding for each resident of the area served, to be used for operating and capital expenses.

(2) The allocation shall be calculated as follows:

- (i) For fiscal year 2009 \$6.50 per each resident of the area served;
- (ii) For fiscal year 2010 \$6.75 per each resident of the area served;
- (iii) For fiscal year 2011 \$6.75 per each resident of the area served; and

(iv) For fiscal year 2012 and each fiscal year thereafter \$7.50 per each resident of the area served.

(d) *Per resident funding for State Library Resource Center.-*

(1) Each year the State Library Resource Center shall receive a minimum amount of funding for each State resident in the previous fiscal year, to be used for operating and capital expenses.

(2) The allocation shall be calculated as follows:

(i) For fiscal year 2009 \$1.85 per State resident;

(ii) For each of fiscal years 2010 and 2011 \$1.67 per State resident; and

(iii) For fiscal year 2012 and each fiscal year thereafter \$1.85 per State resident.

(e) *Payment of funds to resource centers and metropolitan cooperative service programs.-*

(1) The Department shall:

(i) Disburse funds to the State and regional resource centers and metropolitan cooperative service programs; and

(ii) Require that these funds be used subject to any conditions specified by the appropriating agency or imposed under this subtitle.

(2) The Department may authorize the State Comptroller to withhold funds from any regional resource center or metropolitan cooperative service program that fails to meet the standards adopted by the Department.

[An. Code 1957, art. 77, §§ 168, 169; 1978, ch. 22, § 2; 1985, ch. 717, § 1; 1989, ch. 540, § 1; 1996, ch. 349, § 13; 1998, ch. 738; 1999, ch. 701; 2000, ch. 547; 2005, ch. 481; 2008, ch. 414; 2009, ch. 487, § 1; 2010, ch. 484, § 3.]

Effect of amendments. Chapter 414, Acts 2008, effective July 1, 2008, substituted "\$6.50" for "\$7.50" in (c)(2)(iv) and "2011" for "2010" in (c)(2)(vi); and added (c)(2)(v) and redesignated accordingly.

Section 1, ch. 487, Acts 2009, effective June 1, 2009, deleted former (c)(1)(i) through (c)(1)(iii) and redesignated accordingly; in (c)(1)(ii) substituted "\$6.75" for "\$7.50"; in (c)(1)(iii) deleted "and each fiscal year thereafter" following "2011" and substituted "\$6.75" for "\$8.50"; added (c)(1)(iv) and (c)(1)(v); deleted former (d)(2)(i) through (d)(2)(iii); in (d)(2)(i) substituted "2009" for "2004 and each fiscal year thereafter"; added (d)(2)(ii) and (d)(2)(iii); and made related changes.

Section 3, ch. 484, Acts 2010, effective June 1, 2010, added "and each fiscal year thereafter" in (c)(2)(iv); deleted (c)(2)(v); and made related changes.

§ 23-206. Cooperative library corporations.

(a) *Formation.-* Any two or more boards of library trustees acting as incorporators under this section and the nonstock corporation laws may organize a cooperative library corporation to administer joint library projects in their counties.

(b) *Members.-*

(1) The membership of the corporation consists of the members of each board of library trustees that signs the articles of incorporation.

- (2) If each of the member boards agree, another county may become a member of the corporation.
- (c) *Power to delegate.*- The member boards may delegate any of their intracounty powers and duties to the corporation to the extent necessary to enable it to carry out and administer joint library projects.
- (d) *Retirement system for employees.*- Professional and clerical employees of a cooperative library corporation shall join the Teachers' Retirement System.
- (e) *Corporation treated as a library.*- Each cooperative library corporation:
- (1) Is entitled to use the library fund;
 - (2) Shall have the annual audit required for a library;
 - (3) Shall make the annual report required of a board of library trustees; and
 - (4) Is exempt from taxation under § 7-202 of the Tax - Property Article.

[An. Code 1957, art. 77, § 170; 1978, ch. 22, § 2; 1979, ch. 65; 1985, ch. 480, § 1.]

SUBTITLE 3. STATE PUBLICATIONS AND DEPOSITORY PROGRAM

§ 23-301. Definitions.

- (a) *In general.*- In this subtitle the following words have the meanings indicated.
- (b) *Depository library.*-
- (1) "Depository library" means a library designated for the receipt and maintenance of State publications.
 - (2) "Depository library" includes:
 - (i) The State Library Resource Center;
 - (ii) The Maryland Department of Legislative Services Library;
 - (iii) The State Archives;
 - (iv) The Maryland State Law Library;
 - (v) The McKeldin Library of the University of Maryland;
 - (vi) The Library of Congress; and
 - (vii) Any other library designated by the Commission on State Publications Depository and Distribution Program as a depository library.
- (c) *Program.*- "Program" means the State Publications Depository and Distribution Program.
- (d) *State agency.*- "State agency" means any permanent or temporary State office, department, division or unit, bureau, board, commission, task force, authority, institution, State college or university, and any other unit of State government, whether executive, legislative, or judicial, and includes any subunits of State government.
- (e) *State publication.*-

(1) "State publication" means informational materials produced, regardless of format, by the authority of, or at the total or partial expense of any State agency.

(2) "State publication" includes a publication sponsored by a State agency, issued in conjunction with, or under contract with the federal government, local units of government, private individuals, institutions, corporations, research firms, or other entities.

(3) "State publication" does not include correspondence, interoffice and intraoffice memoranda, routine forms or other internal records, publications of bicounty agencies which comply with this program as required in § 23-304 of this subtitle, or any informational listing which any State statute provides shall be sold to members of the public for a fee.

[1982, ch. 912; 1984, ch. 286, § 5; 1996, ch. 10, §§ 16, 21; 1997, ch. 635, § 9; ch. 636, § 9; 2005, ch. 25, § 1.]

Editor's note. Pursuant to paragraph (3)(vii) [(b)(2)(vii)] of this section, as of November 1, 2001, the following additional libraries have been granted status as depositories for all Maryland State agency publications: Salisbury University Library, Government Reference Service of the Washington County Free Library, Frostburg State University Library, Southern Maryland Regional Library at La Plata, Towson University Library, the University of Maryland - Baltimore County Library, Langsdale Library of the University of Baltimore, Prince George's Community College Library and University of Maryland - Eastern Shore Library.

Copying of copyrighted materials. - State agencies' copying of copyrighted materials for placement in public depository libraries is a permissible fair use; however, incorporation-by-reference guidelines should require State agencies to display a prominent notice on each deposited copy stating that the material is copyrighted and is not in the public domain. 79 Op. Att'y Gen. 322 (November 28, 1994).

§ 23-302. State Publications Depository and Distribution Program.

(a) *Created.*- There is created, as part of the State Library Resource Center at the Enoch Pratt Free Library, a State Publications Depository and Distribution Program.

(b) *Responsibilities.*- This Program is responsible for:

(1) The collection of State publications;

(2) The distribution of State publications to the depository libraries;

(3) The monthly issuance of a list of all State publications that have been received by the Center. This list shall be sent to all depository libraries and to others upon request and the Center may provide for subscription services; and

(4) Making determinations on exemptions of State publications from the depository requirements of this subtitle.

(c) *Appointment of Administrator.*- The Administrator of the Program shall be appointed by the Director of the State Library Resource Center.

(d) *Funding.*- Funding for the Program shall be provided in the aid to education budget of the State Board of Education in a program entitled State Publications Depository.

[1982, ch. 912; 1996, ch. 10, § 16; ch. 341, § 1.]

§ 23-303. Responsibilities of State agencies.

(a) *Designation of publications contact person by State agencies.*- Each State agency shall designate an agency publications contact person, and shall notify the Center of the designation.

(b) *State agencies to provide Center with agency publications.*- Each State agency shall furnish to the Center a sufficient quantity of each publication to meet the requirements of the depository system.

[1982, ch. 912; 1996, ch. 10, § 16; ch. 341, § 2.]

§ 23-304. Responsibilities of bicounty agencies.

Each bicounty agency shall:

- (1) Designate an agency publications contact person, and notify the Center of the designation;
- (2) Furnish to the Center 1 copy of each publication to meet the requirements of the depository system; and
- (3) Furnish 1 copy each to a designated branch library within each county library system of the counties in which the bicounty agency operates or furnish all copies to the Center for distribution as stated in this section.

[1982, ch. 912; 1983, ch. 8; 1996, ch. 10, § 16; ch. 341, § 2.]

SUBTITLE 4. COUNTY PUBLIC LIBRARIES

§ 23-401. Authorized.

(a) *Establishment and support.*- The governing body of each county may establish, and appropriate an amount to support, a county public library system free from political influence.

(b) *Board of library trustees.*- Each county public library system shall be governed by a board of trustees. However, a charter county may:

- (1) Establish a county library agency and grant it some or all of the powers of a board of

trustees; or

(2) Have a board of library trustees, provide for the board's selection, and determine its powers.

[An. Code 1957, art. 77, §§ 171, 172; 1978, ch. 22, § 2; 1996, ch. 10, § 16.]

§ 23-402. Special provisions for Baltimore City, Washington County, Prince George's County, and Garrett County.

(a) *Baltimore City.*-

(1) The Mayor and City Council of Baltimore shall be governed by the requirements and regulations pertaining to the Enoch Pratt Free Library of Baltimore City as provided in Chapter 181 of the Acts of 1882 and any other laws applicable to the operation of public libraries.

(2) The powers and duties of the Board of Trustees of the Enoch Pratt Free Library are as provided in Chapter 181 of the Acts of 1882 and the Charter and the Articles of Incorporation of the Enoch Pratt Free Library and other laws applicable to the Board of Trustees of the Enoch Pratt Free Library.

(b) *Washington County.*-

(1) The County Commissioners of Washington County shall be governed by the requirements and regulations pertaining to the Washington County Free Library as provided in Chapter 511 of the Acts of 1898 and any other laws applicable to the operation of public libraries.

(2) The powers and duties of the Board of Trustees of the Washington County Free Library are as provided in Chapter 511 of the Acts of 1898 and the Charter, Articles of Incorporation, and other laws applicable to the Board of Trustees of the Washington County Free Library.

(c) *Prince George's County.*-

(1) Notwithstanding any other provisions of this subtitle, employees of the Prince George's County Memorial Library System have the right to organize and bargain collectively through representatives of their choosing as authorized by the Prince George's County Charter, Section 908, as of July 1, 1986.

(2) Such employees shall be covered under the provisions of the Prince George's County Labor Code, as provided in § 13A-116 of that Code, as of July 1, 1995.

(3) (i) Notwithstanding any other provision of law, a certified bargaining agent or employee organization that represents employees of the Prince George's County Memorial Library System may not call or direct a strike.

(ii) Any certified bargaining agent or employee organization designated as an exclusive representative of the employees of the Prince George's County Memorial Library System that violates any provision of this paragraph shall have its designation as exclusive

representative revoked by the Prince George's County Memorial Library System and the certified bargaining agent, employee organization, and any other employee organization that violates any provision of this paragraph is ineligible to be designated as exclusive representative for a period of 2 years after the violation.

(iii) If a certified bargaining agent or an employee organization violates any provision of this paragraph, the Prince George's County Memorial Library System shall stop making payroll deductions for dues of the organization for 1 year after the violation.

(d) *Prince George's County - Minority business enterprise program.*- (1) (i) In this subsection the following words have the meanings indicated.

(ii) "Bonus points" means established bonus or percentage points used during the bid evaluation process to adjust the bid price submitted by minority business enterprises for the purpose of ascertaining the lowest bidder.

(iii) "Mandatory set-asides" means a procedure designating a certain percentage of total contract dollars for award to minority business enterprises.

(iv) "Mandatory subcontracting" means a procedure mandating that a certain percentage of the dollar amount of designated contracts be subcontracted to minority business enterprises.

(v) "Minority business enterprise" means any business enterprise:

1. A. That is at least 51 percent owned by 1 or more minority individuals; or
- B. In the case of any publicly owned corporation, at least 51 percent of the stock of which is owned by 1 or more minority individuals; and
2. Whose management and daily business operations are controlled by 1 or more minority individuals.

(vi) "Percentage points" means established percentage points given for minority business enterprise participation in a sealed proposal process.

(vii) "Restrictive bidding" means competitive bidding of designated contracts that are restricted to minority business enterprises.

(viii) "Restrictive price quotations" means negotiated small procurements that are restricted to minority business enterprises.

(2) The Board of Trustees of the Prince George's County Memorial Library System shall undertake and complete an internal and market fact-finding process by January 1, 1990, to assess the appropriate scope of a minority business enterprise program for the Board. The results of the fact-finding process, including statistical data, supporting documentation, and reports, shall be reported to the Prince George's County Delegation of the General Assembly by January 31, 1990.

(3) If the fact finding required by subsection (b) of this section demonstrates a compelling governmental interest to adopt a remedial minority business enterprise program, the Board of Trustees, by resolution and by implementing rules and regulations, shall establish a minority business enterprise program to facilitate the participation of certified minority business enterprises in contracts awarded by the Board. The program shall include specific goals and the definition of "minority individual".

(4) In establishing a minority business enterprise program, the Board of Trustees is authorized to use incentives to achieve the designated goals of the program, including but not limited to:

- (i) Mandatory set-aside procedures;
- (ii) Mandatory subcontracting procedures with reasonable waiver provisions;
- (iii) The application of bonus points;
- (iv) The application of percentage points;
- (v) Restrictive bidding;
- (vi) Restrictive price quotations;
- (vii) The reduction or waiver of bonding requirements; and
- (viii) Incentives to encourage maximum participation by:
 1. Small businesses;
 2. A variety of different businesses; and
 3. Businesses located within Prince George's County.
- (5) (i) The Board of Trustees may appoint a minority business enterprise officer to administer any minority business enterprise program established, who shall submit reports to the Board of Trustees.
- (ii) It is the responsibility of the minority business enterprise officer to conduct outreach programs to assist the minority business enterprise community in participating in any minority business enterprise program established under this subsection.
- (6) The Board of Trustees shall advise the Prince George's County Delegation of the General Assembly regarding the substance of any minority business enterprise program that it establishes.
- (7) (i) The program shall be evaluated every 2 years.
- (ii) The results of any evaluation under this paragraph shall be submitted to the Prince George's County Delegation of the General Assembly.
- (e) *Garrett County.*- In Garrett County, the public library system operated by the Board of Trustees shall be known as the Ruth Enlow Library of Garrett County.

[An. Code 1957, art. 77, §§ 171, 173; 1978, ch. 22, § 2; 1986, ch. 531; 1989, ch. 520; 1996, ch. 10, § 16; 1998, ch. 21, § 1; 2000, ch. 546; 2008, ch. 36, § 6.]

Editor's note. Pursuant to § 6, ch. 36, Acts 2008, a comma was deleted following "subsection" in (d)(1)(i).

§ 23-403. Boards of library trustees.

(a) *Composition.*-

- (1) Except as provided in paragraph (3) of this subsection, each board of library trustees consists of seven members appointed by the county governing body from nominees submitted by the board of library trustees.
- (2) A board that existed before 1945 under a corporate charter may continue as constituted if:
 - (i) It has at least seven members;
 - (ii) The members are chosen on the basis of character, ability, and demonstrated interest in library matters; and

- (iii) The members meet the qualifications required under subsection (b) of this section.
- (3) In Harford County, the Board of Trustees consists of at least 7 members, but not more than 11 members, appointed by the county governing body from nominees submitted by the Board of Trustees.
- (b) *Qualifications.*- The members of the board shall be:
- (1) Representative of the area the library serves; and
 - (2) Residents of the county that the library serves.
- (c) *Term and vacancies generally.*-
- (1) Except as provided in subsections (d) and (e) of this section, a member of a board serves for a term of 5 years and until a successor is appointed and qualifies. These terms are staggered as required by the terms of the members serving on the board as of July 1, 1978.
 - (2) Except as provided in paragraph (4) of this subsection, a member may be reappointed but may not serve more than two consecutive terms.
 - (3) A member appointed to fill a vacancy in an unexpired term:
 - (i) Serves only for the remainder of that term and until a successor is appointed and qualifies; and
 - (ii) Is eligible for appointment to serve two additional consecutive terms.
 - (4) A member of the Board of the Prince George's County Memorial Library System may serve an unlimited number of consecutive terms of office.
- (d) *Terms of members in Charles County.*- In Charles County, a member of the Board serves for a term of 4 years.
- (e) *Terms of members in Harford County.*- In Harford County, a member of the Board serves for a term of 5 years, beginning on July 1, and until a successor is appointed and qualifies.
- (f) *Compensation.*- Each member of a board serves without compensation.

[An. Code 1957, art. 77, § 172; 1978, ch. 22, § 2; 1988, chs. 102, 328; 1990, ch. 189; 1996, ch. 10, § 16; 2002, ch. 325.]

§ 23-404. Officers; meetings; attendance.

- (a) *Officers.*- Each year, each board of library trustees:
- (1) Shall elect one of its members as its chairman; and
 - (2) May elect any other officer it requires.
- (b) *Treasurer to be bonded.*- The treasurer of each board of library trustees shall be bonded adequately.
- (c) *Meetings generally.*- Each board of library trustees may determine the time and place of its meetings and may adopt rules for the conduct of its meetings. However:
- (1) Each board shall meet at least once every 3 months;
 - (2) Any final action of a board shall be taken at a public meeting; and
 - (3) The minutes of board meetings shall be open to the public.

(d) *Failure of member to attend meetings.*-

(1) Any member of a board of library trustees who fails to attend at least half of the scheduled meetings of the board during any calendar year shall be considered to have resigned from the board.

(2) The chairman of the board of library trustees shall report the member's name and nonattendance to the county governing body by January 15 of the following year.

(3) The county governing body may reject the resignation if the member explains his nonattendance satisfactorily.

(4) The resignation is effective from the date of the final review by the county governing body, which shall be within 10 days after it receives the report from the chairman of the board of library trustees. The county governing body shall fill any resulting vacancy as provided in § 23-403 of this subtitle.

[An. Code 1957, art. 77, §§ 172, 173; 1978, ch. 22, § 2; 1996, ch. 10, § 16.]

§ 23-405. Powers and duties of board.

(a) *In general.*- In addition to any other powers granted or duties imposed by this subtitle, each board of library trustees has the powers and duties set forth in this section.

(b) *Fees; nonresidents.*-

(1) Except as provided in paragraph (2) of this subsection, each board of library trustees:

(i) Shall establish and operate the library to provide free services to residents of the county in which it is located; and

(ii) May permit persons outside of the county to use the library facilities on the terms and conditions it determines.

(2) In Baltimore City and Baltimore, Charles, Montgomery, and Prince George's counties, the board of library trustees in each of these counties may permit a library to charge fees for the rental of video cassettes.

(c) *Management of library.*- Each board of library trustees may:

(1) Establish and operate libraries at any location in the county;

(2) Determine the policy of the library; and

(3) Adopt reasonable rules, regulations, and bylaws for the use of the library and the conduct of its business.

(d) *Fiscal matters.*- Each board of library trustees may:

(1) Advise in the preparation of, and approve, the library budget;

(2) Receive, account for, control, and supervise, under the rules and regulations of the county governing body, the spending of all public funds received by the library; and

(3) Use the services of the fiscal agencies of the county governing body.

(e) *Audit and annual report.*- Each board of library trustees shall:

(1) Provide for an audit at least annually, by an accountant approved by the State Superintendent of its business and financial transactions and of the accounts of its treasurer;

- (2) Make public the results of the annual audit; and
- (3) Make an annual report to the county governing body and the State Superintendent on or before November 1 of each year, except that a county having a population of more than 500,000 and having a county library agency as provided by § 23-401(b) of this subtitle shall submit their report by January 1. The report shall show:
 - (i) The amounts of money received from the library fund and other sources;
 - (ii) The itemized expenses;
 - (iii) The number of books and periodicals the library has;
 - (iv) The results of the annual audit; and
 - (v) Any other information the Department requires.
- (f) *Other powers.*- Each board of library trustees may:
 - (1) Accept any gift, grant, or appropriation for library purposes from any person under any appropriate terms and conditions;
 - (2) Own and dispose of these gifts, grants, and appropriations;
 - (3) Recommend to the county governing body the acquisition, use, or conveyance of property, for any purpose valid under this subtitle;
 - (4) Select the location of and approve plans for the erection of library buildings, subject to the approval of the county governing body;
 - (5) Make contracts for any library service with any person; and
 - (6) Do anything else necessary for the proper control and development of the library.

[An. Code 1957, art. 77, §§ 171, 173, 178, 179; 1978, ch. 22, § 2; 1986, ch. 96; 1988, ch. 773; 1992, ch. 157; 1993, ch. 340; 1995, ch. 3, § 1; 1996, ch. 10, § 16; ch. 68; 2006, ch. 44, § 6.]

Editor's note. Pursuant to § 6 of ch. 44, Acts 2006, "of this subtitle" was inserted following "23-401(b)" in (e)(3).

Fees. - The public libraries of this State generally must provide access to their information resources without charge, regardless of the format in which the information is presented; however, public libraries may charge fees for the use of ancillary conveniences like copiers, typewriters, and computers for management of personal data and may also charge fees when a patron exceeds reasonable limitations on the use of library resources. 72 Op. Att'y Gen. 262 (1987).

§ 23-406. Library personnel.

- (a) *Appointment of personnel.*- Each board of library trustees:
 - (1) Shall select and appoint a professional librarian eligible for certification as director of the library to serve at the pleasure of the board; and
 - (2) May delegate to the director its authority to appoint any other necessary employees.
- (b) *Personnel policies.*- Each board of library trustees shall establish policies for:
 - (1) Staff classification;
 - (2) Salaries;

- (3) Work conditions;
- (4) Suspension with pay;
- (5) Grievance procedures;
- (6) Benefits, including vacation and sick leave;
- (7) Hours of work; and
- (8) Any other personnel procedures and practices necessary for the efficient operation of the library.

(c) *Qualifications of professional public librarian employees.*- Each professional public librarian appointee to the professional library staff:

- (1) Shall hold a certificate of library qualifications issued by the State Superintendent; or
- (2) (i) Shall be eligible for State certification as a professional public librarian; and
- (ii) Shall apply for certification within 6 months of starting employment.

(d) *Suspension of employees.*-

(1) The director or the director's designee may suspend a library employee without pay for a specified period up to 10 working days, for the following reasons:

- (i) Misconduct in office;
- (ii) Insubordination;
- (iii) Incompetency; or
- (iv) Willful neglect of duty.

(2) (i) The director or the director's designee shall give the suspended employee a written statement that specifies the reasons for the suspension.

(ii) The director or the director's designee shall place a copy of the written statement that specifies the reasons for the suspension in the employee's official personnel file.

(3) (i) The employee shall have the opportunity to reply in writing to the director within 10 working days after the employee receives notice of the suspension.

(ii) The employee may request a hearing before the board of trustees within 10 working days after receiving notice of the suspension.

(iii) If the employee requests a hearing within the 10-day period, the board shall promptly hold a hearing, but a hearing may not be set within 10 working days after the board sends the employee a notice of the hearing.

(4) If an employee is suspended without pay and found not guilty of the reasons for the suspension, the board shall refund all pay benefits lost by reason of the suspension to the employee.

(5) Suspension of an employee with pay shall be as provided by the library's personnel policy.

(e) *Dismissal of employees.*-

(1) On written recommendation of the library director, each board of library trustees may dismiss any library employee under its jurisdiction for any of the following reasons:

- (i) Misconduct in office;
- (ii) Insubordination;
- (iii) Incompetency; or
- (iv) Willful neglect of duty.

(2) (i) Before removing an employee, the director shall send the employee a written copy of the charges against the employee and give the employee an opportunity to request a

hearing before the board within 10 working days.

(ii) If the employee requests a hearing within the 10-day period the board promptly shall hold a hearing, but a hearing may not be set within 10 working days after the board sends the employee a notice of the hearing.

(iii) The employee shall have an opportunity to be heard publicly before the board in his own defense, in person or by counsel and to bring witnesses to the hearing.

(3) If the board votes to remove the employee and:

(i) The decision is unanimous, the decision of the board is final; or

(ii) The decision is not unanimous, the employee may appeal to the State Board of Education through the State Superintendent.

(f) *Duties of library director.*- The director of each library shall:

(1) Act as the general executive officer of the library and be responsible for the management of its operations in accordance with policies approved by the board of library trustees;

(2) Prepare the annual budget of the library, and present it to the board for approval;

(3) Nominate for appointment all library employees in the county library system; and

(4) Establish reasonable rules and adopt regulations for the use of the library system subject to approval by the board of library trustees.

[An. Code 1957, art. 77, §§ 173-175; 1978, ch. 22, § 2; 1990, ch. 622; 1996, ch. 10, § 16.]

§ 23-407. Volunteer aides in public libraries.

The board of library trustees of any library may use volunteer aides. These volunteer aides may not replace library personnel but shall assist regular personnel in carrying out their duties. Each board of library trustees shall develop guidelines for the selection and use of volunteer aides in its library system. Volunteer aides shall be considered agents of the board of library trustees for the limited purpose of comprehensive liability insurance coverage.

[An. Code 1957, art. 77, § 183; 1978, ch. 22, § 2; 1996, ch. 10, § 16.]

§ 23-408. Theft or mutilation of books or other property.

(a) *Prohibited.*- A person may not unlawfully take, detain, mutilate, injure, or disfigure any book, map, picture, engraving, manuscript, or other property of any library.

(b) *Penalty.*- Any person who violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$250, imprisonment not exceeding 3 months, or both.

[An. Code 1957, art. 77, § 180; 1978, ch. 22, § 2; 1996, ch. 10, § 16.]

SUBTITLE 5. FINANCING FOR COUNTY PUBLIC LIBRARIES

§ 23-501. Definitions.

- (a) *In general.*- In this subtitle the following words have the meanings indicated.
- (b) *Adjusted assessed valuation of real property.*- "Adjusted assessed valuation of real property" means the most recent estimate by the State Department of Assessments and Taxation before the State budget is submitted to the General Assembly, of the sum of 100 percent of the assessed valuation of operating real property of public utilities and 50 percent of the assessed value of all other real property for State purposes as of July 1 of the first completed fiscal year before the fiscal year for which the calculation of State library aid is made under this subtitle.
- (c) *Capital expense.*- "Capital expense" means principal and interest payments, or current capital spending or accumulation for:
- (1) The purchase of land for libraries;
 - (2) The purchase and construction of library buildings;
 - (3) Remodeling and adding to library buildings; and
 - (4) The purchase of equipment and furniture for these library buildings.
- (d) *Net taxable income.*- "Net taxable income" means the amount certified by the State Comptroller for the second full calendar year before the fiscal year for which the calculation of State library aid is made under this subtitle, based on tax returns filed on or before July 1 after that calendar year.
- (e) *Population.*- "Population" means population determined from figures available as of July 1 of the calendar year before the fiscal year for which the calculation is made, from:
- (1) The latest decennial census; or
 - (2) Estimates prepared by the Department of Health and Mental Hygiene.
- (f) *Real property.*- "Real property" means all property classified as real property under § 8-101 (b) of the Tax - Property Article.
- (g) *Wealth.*- "Wealth" means the sum of net taxable income and adjusted assessed valuation of real property.

[An. Code 1957, art. 77, § 176; 1978, ch. 22, § 2; 1979, ch. 423, § 1; 1985, ch. 480, § 1; 1996, ch. 10, § 16; 2002, ch. 121; 2006, ch. 44, § 6.]

Editor's note. As to applicability to payments of State aid for fiscal years beginning after June 30, 2003, see § 2, ch. 121, Acts 2002.

Pursuant to § 6 of ch. 44, Acts 2006, "State" was added before "Department" in (b).

§ 23-502. Program established.

(a) *In general.*- There is a county-State minimum library program for the support and growth of public libraries.

(b) *Expenses in which State shares.*- The State shall share in the current operating and capital expenses of the county public library systems that participate in the minimum library program.

[An. Code 1957, art. 77, § 176; 1978, ch. 22, § 2; 1996, ch. 10, § 16.]

§ 23-503. State and counties to share cost.

(a) *In general.*-

(1) The entire capital and operating cost of the minimum library program for this State as a whole shall be shared as provided in this subsection.

(2) The State shall provide:

(i) Approximately 40 percent of the total cost of the minimum program; and

(ii) Not less than 20 percent of the cost of the minimum program in any county.

(3) The counties participating in the program together shall provide through local taxes approximately 60 percent of the total statewide cost of the minimum program.

(b) *Expenses per resident.*-

(1) Each county public library system that participates in the minimum library program shall be provided for each resident of the county, to be used for operating and capital expenses:

(i) For fiscal year 2009 - \$14.00;

(ii) For fiscal year 2010 - \$14.00;

(iii) For fiscal year 2011 - \$14.00; and

(iv) For fiscal year 2012 and each fiscal year thereafter - \$15.00.

(2) (i) The State shall share in this amount.

(ii) Any county may provide an amount greater than its share under the cooperative program, but the State may not share in the excess.

(c) *Social Security contributions.*- Any employer Social Security contributions required by federal law for any employee in a county public library system shall remain the obligation of the employer.

[An. Code 1957, art. 77, § 176; 1978, ch. 22, § 2; ch. 988; 1982, ch. 486; 1986, ch. 124; 1987, ch. 521; 1988, ch. 696; 1989, ch. 695; 1990, ch. 217; 1992, 2nd Sp. Sess., ch. 1; 1994, ch. 722; 1996, ch. 8; ch. 10, § 16; 1998, ch. 575, § 1; 2005, ch. 481; 2008, ch. 414; 2009, ch. 487, § 1; 2010, ch. 484, § 3.]

Effect of amendments. Chapter 481, Acts 2005, effective July 1, 2005, rewrote (b)(1)(i) through (b)(1)(iii); added (b)(1)(iv); and rewrote and redesignated former (b)(1)(iv) as (b)(1)(v).

Chapter 414, Acts 2008, effective July 1, 2008, added "\$14.00" in (b)(1)(iv) and transferred "\$15.00; and" to (b)(1)(v), redesignated language from former (b)(1)(v) as (b)(1)(vi) and added "For fiscal year 2011".

Section 1, ch. 487, Acts 2009, effective June 1, 2009, deleted former (b)(1)(i) through (b)(1)(iii) and redesignated accordingly; in (b)(1)(ii) substituted "\$14.00" for "\$15.00"; in (b)(1)(iii) deleted "and each fiscal year thereafter" following "2011" and substituted "\$14.00" for "\$16.00"; added (b)(1)(iv) and (b)(1)(v); and made related changes.

Section 3, ch. 484, Acts 2010, effective June 1, 2010, added "and each fiscal year thereafter" in (b)(1)(iv); deleted (b)(1)(v); and made related changes.

§ 23-504. Retirement contributions.

(a) *"Agency" defined.*- In this section, "Agency" means the State Retirement Agency.

(b) *Examination.*- The Agency may at any time examine the records of public libraries to determine whether the State's payments for retirement contributions for employees of the public libraries are in accordance with the provisions of Division II of the State Personnel and Pensions Article.

(c) *Overpayment by State; proceedings.*-

(1) (i) If an examination of the records of a public library shows that the State has paid more than is required under Division II of the State Personnel and Pensions Article, within 30 days after the date of the notice to the library of the State overpayment, the public library may appeal the notice of State overpayment to the Secretary of Budget and Management who shall appoint a hearing examiner.

(ii) The hearing examiner shall make recommendations to the Secretary of Budget and Management who shall make a final determination regarding the amount, if any, of the State overpayment.

(2) If a public library does not appeal to the Secretary of Budget and Management or if the Secretary of Budget and Management determines that the State is due reimbursement for excess payments as provided in paragraph (1) of this subsection, at the request of the Department of Education the moneys owed shall be deducted from any other State funds that would otherwise be paid to the public library.

(3) For purposes of the Administrative Procedure Act, an appeal taken under this section is not a contested case.

(d) *Reimbursement.*- Any reimbursements which result from audits under this section:

(1) Shall be applied first to reimburse the Agency for the expenses of the audits; and

(2) After reimbursement to the Agency under item (1) of this subsection, shall be credited to the General Fund.

[1990, ch. 217; 1992, 2nd Sp. Sess., ch. 1; 1994, ch. 468; 1996, ch. 10, § 16; ch. 349, § 13.]

Use of fund. - Because the State's financial assistance programs for community colleges and libraries do not allocate funding for retirement contributions, the State Retirement Agency has little basis on which to make a finding of duplicative payment of retirement contributions for employees of those entities. The Agency retains authority to audit the local educational agencies and to seek repayment of any overpayment or duplicative payment that may be made for any other reason. 93 Op. Att'y Gen. 81 (June 26, 2008).

§ 23-505. Matching amounts; current and capital expenses.

(a) *County share.*- To be eligible for its State share of the minimum program, a county government shall levy an annual tax sufficient to provide an amount for library purposes equal to:

(1) The wealth of the county; times

(2) A uniform percentage, rounded to the fifth decimal place equal to:

(i) 60 percent of the total minimum program for current and capital expenses to be shared for all counties; divided by

(ii) The total wealth of all the counties.

(b) *State share.*- The State share of the minimum program for current and capital expenses for each county is the difference between the county share calculated under subsection (a) of this section and the minimum program for current and capital expenses to be shared under § 23-503 of this subtitle.

(c) *Limitation on capital expense.*- Not more than 20 percent of the county and State shares may be applied to capital expenses.

(d) *Source of funds for county share of capital expense.*- The county appropriation for capital expenses may include funds from any source except the State.

[An. Code 1957, art. 77, § 176; 1978, ch. 22, § 2; 1986, ch. 124; 1996, ch. 10, § 16.]

§ 23-506. Payment and use of funds.

(a) *Payment.*- The State Superintendent shall authorize the payment of funds under this subtitle:

(1) To the board of library trustees of each county that has a board of trustees; or

(2) In each county that does not have a board of library trustees, to the county.

(b) *Administration of funds.*-

(1) Current operating funds shall be administered by the county board of library trustees.

(2) Capital expense funds shall be administered by the county council, board of county commissioners, or Mayor and City Council of Baltimore City.

(c) *Use of funds.*-

(1) The funds provided under this subtitle may be used only for library purposes.

(2) The State Superintendent shall require that these funds be used subject to any

conditions specified by the appropriating agency or imposed under this subtitle.

[An. Code 1957, art. 77, § 176; 1978, ch. 22, § 2; 1996, ch. 10, § 16.]

§ 23-506.1. Prevention of access by minors to obscene materials or child pornography.

(a) *Definitions.*-

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

(2) "Obscene" has the meaning stated in § 11-203 of the Criminal Law Article.

(3) "Child pornography" means a violation of § 11-207 of the Criminal Law Article.

(b) *Policies and procedures.*- On or before January 1, 2001, each county or board of trustees of a county library shall:

(1) Adopt and implement policies and procedures to prevent minors from obtaining access through the library, by means of the Internet, the World Wide Web, Usenet, or any other interactive computer service to materials that are obscene or constitute child pornography; and

(2) Submit the policies and procedures required under this section to the State Superintendent for review.

(c) *Monitoring compliance.*- The State Superintendent or a designee of the State Superintendent shall regularly monitor the county libraries to determine whether each library is complying with the policies and procedures adopted for preventing a minor from obtaining Internet access to obscene materials through the library.

[2000, ch. 9; 2002, ch. 213, § 6.]

§ 23-507. Withholding by Comptroller.

The State Superintendent shall authorize the State Comptroller to withhold State funds from any county that fails:

(1) To appropriate the amount of its share of the minimum program; or

(2) To meet the requirements of the law or of the State Board for operating the county library.

[An. Code 1957, art. 77, § 176; 1978, ch. 22, § 2; 1996, ch. 10, § 16.]

§ 23-508. Obligations under former Article 77, § 177(e).

Through fiscal year 1983, the State Department of Education shall satisfy its obligation of former Article 77, § 177(e) by equal yearly payments.

[1978, ch. 22, § 2; 1996, ch. 10, § 16.]

§ 23-509. Sick pay.

Remuneration of an employee on account of sickness or accident of the employee shall be paid and treated as sick pay and not as continuation of salary.

[1981, ch. 744; 1996, ch. 10, § 16.]

§ 23-510. County library capital project grant program.

(a) *Definitions.*-

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

(2) "Capital project" means the:

(i) Acquisition of land or buildings for a county library; or

(ii) Construction or improvement of a county library.

(3) "Construction or improvement" means planning, design, engineering, alteration, construction, reconstruction, enlargement, expansion, extension, improvement, replacement, rehabilitation, renovation, upgrading, repair, or capital equipping.

(4) "County library" means a library in a county public library system in the State.

(5) "Division" means the Division of Library Development and Services in the Department.

(b) *Program established.*-

(1) There is a State grant program for county public library capital projects in the Division.

(2) The grant program is in addition to the county-State minimum library program established under § 23-502 of this subtitle.

(c) *Applications.*-

(1) On or before July 15 of each year, a county public library system may submit applications to the Division to receive grants for county library capital projects for the next fiscal year.

(2) In order to apply for a capital project grant, a county public library system shall have:

(i) A countywide library plan that includes a mission statement, needs statement, and multiyear goals and objectives on file with the Division; and

(ii) A master plan that includes a description of the capital project approved by the applicant's governing body.

(3) An application shall include:

(i) A description of the scope and purpose of the project;

- (ii) A building plan that includes the estimated total cost of the project; and
 - (iii) Any other information required by the Division.
- (4) A county public library system may not apply for more than three capital project grants in a fiscal year.
- (d) *Development of grant program.*-
- (1) The Division shall develop and administer a grant program to assist in the funding of county library capital projects.
 - (2) The purpose of the grant program is to:
 - (i) Provide a uniform and objective analysis of proposed capital projects; and
 - (ii) Support projects that address the library needs in the State.
 - (3) Grants under the program:
 - (i) Require a matching fund from any combination of county, municipal, or private sources;
 - (ii) May not exceed 50% of the total cost of a capital project; and
 - (iii) May not be for an amount less than \$20,000.
- (e) *Review of applications.*-
- (1) The Division shall review grant applications submitted in accordance with subsection (c) of this section.
 - (2) On or before October 1 of each year, the Division shall make recommendations to the State Board regarding capital project grants for the next fiscal year.
 - (3) In making its recommendations, the Division shall consider:
 - (i) The public necessity and urgency of a project;
 - (ii) The need for additional sources of funding for a project;
 - (iii) The estimated cost and timeliness of executing a project;
 - (iv) The viability of matching funds for a project; and
 - (v) Geographic diversity.
 - (4) On or before November 1 of each year, the State Board shall:
 - (i) Approve capital projects for funding in the State budget for the next fiscal year; and
 - (ii) Forward the list of approved capital projects to the Department of Budget and Management.
 - (5) For fiscal year 2008 and each fiscal year thereafter, the Governor shall include in the annual operating or capital budget submission \$5,000,000 for county library capital projects.
- (f) *Reporting.*- The State Board shall report to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly, on or before October 1 of each year, on State grants awarded for county public library capital projects for the prior fiscal year.
- (g) *Regulations.*- The State Board shall adopt regulations to implement the grant program established under this section.

[2006, ch. 494; 2008, ch. 36, § 6.]

Editor's note. Section 2, ch. 494, Acts 2006, provides that the act shall take effect July 1, 2006. Pursuant to § 6 of ch. 36, Acts 2008, "of this subtitle" was substituted for "of this article" in (b)(2).

TITLE 25. EDUCATIONAL COMPACTS

Subtitle 3. Interstate Library Compact.

Sec.

25-301. Execution of Compact.

25-302. Implementation of Compact.

25-303. Text of Compact.

SUBTITLE 3. INTERSTATE LIBRARY COMPACT

§ 25-301. Execution of Compact.

The Interstate Library Compact is hereby enacted into law and entered into by this State with all states legally joining it, in the form substantially as it appears in §§ 25-302 and 25-303 of this subtitle.

[An. Code 1957, art. 77, § 166A; 1978, ch. 22, § 2.]

§ 25-302. Implementation of Compact.

(a) *Compliance with laws applicable to political subdivisions.*- No political subdivision of this State shall be party to a library agreement which provides for the construction or maintenance of a library pursuant to Article III, subdivision (c) (7) of the Compact, nor pledge its credit in support of such a library, or contribute to the capital financing thereof, except after compliance with any laws applicable to such political subdivisions relating to or governing capital outlays and the pledging of credit.

(b) *Meaning of "State library agency".*- As used in the Compact, "State library agency," with reference to this State, means the Division of Library Development and Services of the State Department of Education.

(c) *Interstate library districts.*- An interstate library district lying partly within this State may claim and be entitled to receive State aid in support of any of its functions to the same extent and in the same manner as such functions are eligible for support when carried on by entities wholly within this State. For the purposes of computing and apportioning State aid to an interstate library district, this State will consider that portion of the area which lies within this State as an independent entity for the performance of the aided function or functions and compute and apportion the aid accordingly. Subject to any applicable laws of this State, such a district also may apply for and be entitled to receive any federal aid for which it may be eligible.

(d) *Compact administrator and deputy administrators.*- The Assistant Superintendent for Libraries shall be the compact administrator pursuant to Article X of the Compact. The State Board of Education on the recommendation of the State Superintendent of Schools may appoint one or more deputy compact administrators pursuant to said article.

(e) *Notices upon withdrawal.*- In the event of withdrawal from the Compact the Governor shall send and receive any notices required by Article XI (b) of the Compact.

[An. Code 1957, art. 77, § 166A; 1978, ch. 22, § 2; 2001, ch. 29, § 6.]

§ 25-303. Text of Compact.

Interstate Library Compact

Article I. Policy and Purpose

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the states party to this Compact to cooperate and share their responsibilities; to authorize cooperation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a cooperative basis, and to authorize cooperation and sharing among localities, states and others in providing joint or cooperative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

Article II. Definitions

As used in this Compact:

- (a) "Public library agency" means any unit or agency of local or State government operating or having power to operate a library.
- (b) "Private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library.
- (c) "Library agreement" means a contract establishing an interstate library district pursuant to this Compact or providing for the joint or cooperative furnishing of library services.

Article III. Interstate Library Districts

- (a) Any one or more public library agencies in a party state in cooperation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this Compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may cooperate therewith, assume duties, responsibilities and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.
- (b) Within an interstate library district, and as provided by a library agreement, the

performance of library functions may be undertaken on a joint or cooperative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(c) If a library agreement provides for joint establishment, maintenance or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

(1) Undertake, administer and participate in programs or arrangements for securing, lending or servicing of books and other publications, any other materials suitable to be kept or made available by libraries, library equipment or for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof.

(2) Accept for any of its purposes under this Compact any and all donations, and grants of money, equipment, supplies, materials, and services, (conditional or otherwise), from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and receive, utilize and dispose of the same.

(3) Operate mobile library units or equipment for the purpose of rendering bookmobile service within the district.

(4) Employ professional, technical, clerical, and other personnel, and fix terms of employment, compensation and other appropriate benefits; and where desirable, provide for the in-service training of such personnel.

(5) Sue and be sued in any court of competent jurisdiction.

(6) Acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service.

(7) Construct, maintain and operate a library, including any appropriate branches thereof.

(8) Do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

Article IV. Interstate Library Districts, Governing Board

(a) An interstate library district which establishes, maintains or operates any facilities or services in its own right shall have a governing board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its business in accordance with provision therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.

(b) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

Article V. State Library Agency Cooperation

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or cooperative library programs, render joint or cooperative library services, and enter into and perform arrangements for the cooperative or joint acquisition, use, housing and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services or arrangements may include provision for the exercise on a cooperative or joint basis of any power exercisable by an interstate library district and an agreement embodying any such program, service or arrangement shall contain provisions covering the subjects detailed in Article VI of this Compact for interstate library agreements.

Article VI. Library Agreements

(a) In order to provide for any joint or cooperative undertaking pursuant to this Compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this Compact shall, as among the parties to the agreement:

(1) Detail the specific nature of the services, programs, facilities, arrangements or properties to which it is applicable.

(2) Provide for the allocation of costs and other financial responsibilities.

(3) Specify the respective rights, duties, obligations and liabilities of the parties.

(4) Set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.

(b) No public or private library agency shall undertake to exercise itself, or jointly with any other library agency, by means of a library agreement any power prohibited to such agency by the constitution or statutes of its state.

(c) No library agreement shall become effective until filed with the compact administrator of each state involved, and approved in accordance with Article VII of this Compact.

Article VII. Approval of Library Agreements

(a) Every library agreement made pursuant to this Compact shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of his state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in

which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within 90 days of its submission shall constitute approval thereof.

(b) In the event that a library agreement made pursuant to this Compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (a) of this article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

Article VIII. Other Laws Applicable

Nothing in this Compact or in any library agreement shall be construed to supersede, alter or otherwise impair any obligation imposed on any library by otherwise applicable law, nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

Article IX. Appropriations and Aid

(a) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.

(b) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

Article X. Compact Administrator

Each state shall designate a compact administrator with whom copies of all library agreements to which his state or any public library agency thereof is party shall be filed. The administrator shall have such other powers as may be conferred upon him by the laws of his state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this Compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

Article XI. Entry Into Force and Withdrawal

(a) This Compact shall enter into force and effect immediately upon its enactment into law by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by such state.

(b) This Compact shall continue in force with respect to a party state and remain binding upon such state until six months after such state has given notice to each other party state of the repeal thereof. Such withdrawal shall not be construed to relieve any party to a library agreement entered into pursuant to this Compact from any obligation of that agreement prior to the end of its duration as provided therein.

Article XII. Construction and Severability

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state party thereto, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

[An. Code 1957, art. 77, § 166B; 1978, ch. 22, § 2; 1990, ch. 6, § 2.]

STATE GOVERNMENT

TITLE 10. GOVERNMENTAL PROCEDURES

Subtitle 5. Meetings.

Sec.

10-501. Legislative policy.

10-502. Definitions.

10-502.1. State Open Meetings Law Compliance Board.

10-502.2. Membership.

10-502.3. Quorum; meetings; compensation.

- 10-502.4. Duties.
- 10-502.5. Complaint.
- 10-502.6. Complaint - Prospective violation.
- 10-503. Scope of subtitle; administrative function meetings.
- 10-504. Conflict of laws.
- 10-505. Open sessions generally required.
- 10-506. Notice of open session.
- 10-507. Attendance at open session.
- 10-507.1. Interpreters.
- 10-508. Closed sessions permitted.
- 10-509. Minutes; tape recordings.
- 10-510. Enforcement.
- 10-511. Penalty.
- 10-512. Short title.

SUBTITLE 5. MEETINGS

§ 10-501. Legislative policy.

- (a) *In general.*- 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:
 - (i) the performance of public officials; and
 - (ii) the deliberations and decisions that the making of public policy involves.
- (b) *Accountability; faith; effectiveness.*-
- (1) The ability of the public, its representatives, and the media to attend, report on, and broadcast meetings of public bodies and to witness the phases of the deliberation, policy formation, and decision making of public bodies ensures the accountability of government to the citizens of the State.
 - (2) The conduct of public business in open meetings increases the faith of the public in government and enhances the effectiveness of the public in fulfilling its role in a democratic society.
- (c) *Public policy.*- Except in special and appropriate circumstances when meetings of public bodies may be closed under this subtitle, it is the public policy of the State that the public be provided with adequate notice of the time and location of meetings of public bodies, which shall be held in places reasonably accessible to individuals who would like to attend these meetings.

[1991, ch. 655.]

Maryland Law Review. For article, "Of Men and Laws: Murphy, Cornford, Arnold, Potter, Parkinson, Peter, Maccoby, and Gall," see 38 Md. L. Rev. 37 (1978).

Repeal of duplicative statutory provisions as part of code revision. - Certain statutory provisions enacted in 1954 which are, in large part, duplicative of the Open Meetings Act may be repealed as part of code revision without effecting a substantive change in the law. However, the final clause of each provision that states that "no ordinance, resolution, rule or regulation shall be finally adopted at [a meeting not open to the public]" should be retained. 94 Op. Att'y Gen. 161 (Sept. 29, 2009).

Public right to observe deliberative process. - While the public is not afforded any right to participate in meetings setting public policy, the public is assured right to observe the deliberative process and the making of decisions by the public body at open meetings. *City of New Carrollton v. Rogers*, 287 Md. 56, 410 A.2d 1070 (1980).

Where a city council wished to debate the issue of restructuring the council at a special meeting, and such discussion was part of the "deliberations" that citizens had to be allowed to observe under the Open Meetings Act, § 10-501 et seq. of this subtitle, the council was obligated to provide adequate notice of the time and location of the meeting to the public under (c). *Comty. & Labor United for Balt. Charter Comm. v. Balt. City Bd. of Elections*, 377 Md. 183, 832 A.2d 804 (2003).

No constitutional right to privacy in the hiring process. - County commissioners have the discretion to deal with personnel matters, including applications for employment, in open session; a job applicant has no constitutional right to privacy in the hiring process. 80 Op. Att'y Gen. 241 (Dec. 20, 1995).

No distinction between formal and informal meetings - Provisions requiring open meetings make no distinction between formal and informal meetings of the public body. *City of New Carrollton v. Rogers*, 287 Md. 56, 410 A.2d 1070 (1980).

Gross violation of open meeting provisions. - To give notice of a meeting of the public body, and then intentionally prevent the public from attending, would constitute a gross violation of the provisions requiring open meetings. *City of New Carrollton v. Rogers*, 287 Md. 56, 410 A.2d 1070 (1980).

Open sessions for development plans. - A county board of appeals is required to conduct, in open session, its deliberations regarding consideration of a development plan, which has a very close nexus to zoning and constitutes an "other zoning matter" under § 10-503 (b) (2). *Wesley Chapel Bluemount Ass'n v. Baltimore County*, 347 Md. 125, 699 A.2d 434 (1997).

County board of education may unilaterally determine to hold open meetings. - A county board of education may determine unilaterally to conduct collective bargaining negotiations at meetings open to the public. *Carroll County Educ. Ass'n v. Board of Educ.*, 294 Md. 144, 448 A.2d 345 (1982).

Applicability of Open Meetings Act to continuing education conferences. - Neither the State nor the St. Mary's County Open Meetings Acts apply to training sessions aimed at improving interpersonal relations and leadership skills; whether either Act would apply to attendance by a quorum of county commissioners at a continuing education conference depends on the conference's topic and its relation to matters before the county commissioners. 80 Op. Att'y Gen. 241 (Dec. 20, 1995).

Open meetings requirements for St. Mary's County board of education. - County boards of

education need not meet in open session when they are performing an "administrative function" and when the State education law does not otherwise require an open meeting. Unlike other local boards of education, the St. Mary's Board is also subject to the St. Mary's Open Meetings Act ("St. Mary's OMA"). The St. Mary's OMA does not have a specific exclusion for an "administrative function," but has different limitations on its scope; therefore, it must meet in open session for many, if not most, activities that would qualify as an administrative function under the State Open Meetings Act (OMA) and for which another local board of education could legally meet in closed session. However, some activities that are an administrative function under the State OMA and that are outside the scope of the open meeting requirements of the State education law are also outside the scope of the county's OMA. One example would be a session in which the Superintendent or other staff report to the Board solely for informational purposes on matters within the Superintendent's purview, so long as the briefing involved no formulation of substantive policy and did not require any action by the Board. Such a briefing would not only be an administrative function under the State OMA, and outside the scope of the State education law's open meeting requirements, but would also not meet the definition of "official action" that triggers the open meeting. 95 Op. Atty. Gen. 138 (Sept. 7, 2010).

Applicability of Act to city's private development corporation. - City of Baltimore Development Corporation (BDC) is, in essence, a public body for the purposes of the Open Meetings Act, § 10-501et seq. of this subtitle, and it is an instrumentality of Baltimore City for the purposes of Maryland's Public Information Act (MPIA), § 10-601 et seq. of this title. Though a private corporation, the BDC functioned as part of the City's exercise of its eminent domain powers and, therefore, constituted a public body and, since the MPIA did not require an entity be established by a statute for it to be subject to its provisions, the BDC was found to clearly act as an instrumentality of the City; therefore, the provisions of the MPIA applied to it. City of Balt. Dev. Corp. v. Carmel Realty Assocs., 395 Md. 299, 910 A.2d 406 (2006).

Admission of public to juvenile facility. - The Open Meetings Act does not require the Department of Juvenile Services to admit members of the public to a juvenile facility; if the Department chooses to exercise its discretion to exclude members of the public from a facility, the Open Meetings Act would require a legislative committee to hold an open meeting elsewhere. 78 Op. Atty Gen. 240 (1993).

Closed session was acceptable. - Municipality's vote to condemn an owner's real property constituted a proper exercise of the authority vested in that legislative body by Article 23A, § 2(b) (24) of the Code, and the municipality's city charter, with no ordinance or legislative act specific to the property being required. As such, the municipality did not violate § 10-508 of this subtitle, the Open Meetings Act, when it voted to condemn the property in a closed session. J.P. Delphey L.P. v. Mayor of Frederick, 396 Md. 180, 913 A.2d 28 (2006).

Finding of willfulness not required for an award of counsel fees. - Maryland Open Meetings Act, under § 10-510(d)(5) of this subtitle, does not, on its face, require a finding of willfulness as a precondition to the assessment of counsel fees and litigation expenses. Armstrong v. Mayor of Baltimore, 409 Md. 648, 976 A.2d 349 (2009).

Subsequent ordinance amendment mooted appeal involving Open Meetings Act violation. - In a zoning appeal brought by neighboring residents, it was held that although a city violated the Maryland Open Meetings Act, under this subtitle, when it approved a parking lot ordinance for an apartment development, a subsequent zoning amendment making it no longer necessary to enact a parking lot ordinance for a development applied retroactively and made the issue moot on appeal. Therefore, the special intermediate appellate court had properly dismissed the residents' appeal. Armstrong v. Mayor of Baltimore, 409 Md. 648, 976 A.2d 349 (2009).

Applied in 2BD Assocs. v. County Comm'rs, 896 F. Supp. 528 (D. Md. 1995).

Quoted in Baltimore County v. Wesley Chapel Bluemount Ass'n, 110 Md. App. 585, 678 A.2d 100 (1996); Andy's Ice Cream, Inc. v. City of Salisbury, 125 Md. App. 125, 724 A.2d 717 (1999), cert. denied, 353 Md. 473, 727 A.2d 382 (1999); Handley v. Ocean Downs, LLC, 151 Md. App. 615, 827 A.2d 961 (2003).

Cited in Samuels v. Tschechtelin, 135 Md. App. 483, 763 A.2d 209 (2000); Armstrong v. Mayor of Baltimore, 410 Md. 426, 979 A.2d 98 (2009); 120 W. Fayette St., LLLP v. Mayor & City Council of Balt. City, 413 Md. 309, 992 A.2d 459 (2010).

§ 10-502. Definitions.

- (a) *In general.*- In this subtitle the following words have the meanings indicated.
- (b) *Administrative function.*-
- (1) "Administrative function" means the administration of:
- (i) a law of the State;
 - (ii) a law of a political subdivision of the State; or
 - (iii) a rule, regulation, or bylaw of a public body.
- (2) "Administrative function" does not include:
- (i) an advisory function;
 - (ii) a judicial function;
 - (iii) a legislative function;
 - (iv) a quasi-judicial function; or
 - (v) a quasi-legislative function.
- (c) *Advisory function.*- "Advisory function" means the study of a matter of public concern or the making of recommendations on the matter, under a delegation of responsibility by:
- (1) law;
 - (2) the Governor or an official who is subject to the policy direction of the Governor;
 - (3) the chief executive officer of a political subdivision of the State or an official who is subject to the policy direction of the chief executive officer; or
 - (4) formal action by or for a public body that exercises an administrative, judicial, legislative, quasi-judicial, or quasi-legislative function.
- (d) *Board.*- "Board" means the State Open Meetings Law Compliance Board.
- (e) *Judicial function.*-
- (1) "Judicial function" means the exercise of any power of the Judicial Branch of the State government.
- (2) "Judicial function" includes the exercise of:
- (i) a power for which Article IV, § 1 of the Maryland Constitution provides;
 - (ii) a function of a grand jury;
 - (iii) a function of a petit jury;
 - (iv) a function of the Commission on Judicial Disabilities; and
 - (v) a function of a judicial nominating commission.

- (3) "Judicial function" does not include the exercise of rulemaking power by a court.
- (f) *Legislative function*.- "Legislative function" means the process or act of:
- (1) approving, disapproving, enacting, amending, or repealing a law or other measure to set public policy;
 - (2) approving or disapproving an appointment;
 - (3) proposing or ratifying a constitution or constitutional amendment; or
 - (4) proposing or ratifying a charter or charter amendment.
- (g) *Meet*.- "Meet" means to convene a quorum of a public body for the consideration or transaction of public business.
- (h) *Public body*.-
- (1) "Public body" means an entity that:
 - (i) consists of at least 2 individuals; and
 - (ii) is created by:
 1. the Maryland Constitution;
 2. a State statute;
 3. a county or municipal charter;
 4. an ordinance;
 5. a rule, resolution, or bylaw;
 6. an executive order of the Governor; or
 7. an executive order of the chief executive authority of a political subdivision of the State.
 - (2) "Public body" includes:
 - (i) any multimember board, commission, or committee appointed by the Governor or the chief executive authority of a political subdivision of the State, or appointed by an official who is subject to the policy direction of the Governor or chief executive authority of the political subdivision, if the entity includes in its membership at least 2 individuals not employed by the State or the political subdivision;
 - (ii) any multimember board, commission, or committee that:
 1. is appointed by:
 - A. an entity in the Executive branch of State government, the members of which are appointed by the Governor, and that otherwise meets the definition of a public body under this subsection; or
 - B. an official who is subject to the policy direction of an entity described in item A of this item; and
 2. includes in its membership at least 2 individuals who are not members of the appointing entity or employed by the State; and
 - (iii) the Maryland School for the Blind.
 - (3) "Public body" does not include:
 - (i) any single member entity;
 - (ii) any judicial nominating commission;
 - (iii) any grand jury;
 - (iv) any petit jury;
 - (v) the Appalachian States Low Level Radioactive Waste Commission established in § 7-302 of the Environment Article;

- (vi) except when a court is exercising rulemaking power, any court established in accordance with Article IV of the Maryland Constitution;
 - (vii) the Governor's cabinet, the Governor's Executive Council as provided in Title 8, Subtitle 1 of this article, or any committee of the Executive Council;
 - (viii) a local government's counterpart to the Governor's cabinet, Executive Council, or any committee of the counterpart of the Executive Council;
 - (ix) except as provided in paragraph (1) of this subsection, a subcommittee of a public body as defined under paragraph (2)(i) of this subsection;
 - (x) the governing body of a hospital as defined in § 19-301 of the Health - General Article; and
 - (xi) a self-insurance pool that is established in accordance with Title 19, Subtitle 6 of the Insurance Article or § 9-404 of the Labor and Employment Article by:
 1. a public entity, as defined in § 19-602 of the Insurance Article; or
 2. a county or municipal corporation, as defined in § 9-404 of the Labor and Employment Article.
- (i) *Quasi-judicial function*.- "Quasi-judicial function" means a determination of:
- (1) a contested case to which Subtitle 2 of this title applies;
 - (2) a proceeding before an administrative agency for which Title 7, Chapter 200 of the Maryland Rules would govern judicial review; or
 - (3) a complaint by the Board in accordance with this subtitle.
- (j) *Quasi-legislative function*.- "Quasi-legislative function" means the process or act of:
- (1) adopting, disapproving, amending, or repealing a rule, regulation, or bylaw that has the force of law, including a rule of a court;
 - (2) approving, disapproving, or amending a budget; or
 - (3) approving, disapproving, or amending a contract.
- (k) *Quorum*.- "Quorum" means:
- (1) a majority of the members of a public body; or
 - (2) any different number that law requires.

[An. Code 1957, art. 76A, § 8; 1984, ch. 284, § 1; ch. 285, § 8; 1986, ch. 396, § 1; 1991, ch. 655; 1993, ch. 5, § 1; 1994, ch. 3, § 1; 1996, ch. 10, § 1; 1997, ch. 14, § 20; ch. 70, § 4; 1998, ch. 617; 1999, ch. 34, § 7; 2004, ch. 25, § 6; ch. 440; 2006, ch. 584; 2007, ch. 5, § 7; ch. 643; 2009, chs. 60, 164.]

Effect of amendments. Chapter 643, Acts 2007, effective July 1, 2007, added "or an official ... the Governor" in (c)(2) and added "or an official ... executive officer" in (c)(3). Chapter 60, Acts 2009, enacted April 14, 2009, and effective from date of enactment, substituted "administrative" for "executive" in (c)(4); and added "or municipal" in (h)(1)(ii)3. Chapter 164, Acts 2009, effective October 1, 2009, added (h)(2)(ii), redesignated accordingly and made related changes.

Editor's note. Pursuant to § 7 of ch. 5, Acts 2007, "§ 19-301" was substituted for "§ 19-301(g)" in (h)(3)(x), following the redesignations made pursuant to § 6, ch. 25, Acts 2004. Section 4, ch. 60, Acts 2009, approved April 14, 2009, and effective from date of enactment, provides that "the provisions of this Act are intended solely to correct technical errors in the law and there is no intent to revive or otherwise affect law that is the subject of other acts, whether

those acts were signed by the Governor prior to or after the signing of this Act."

Maryland Law Review. For article, "Survey of Developments in Maryland Law, 1987-88," see 48 Md. L. Rev. 551 (1989).

"Executive function." - The inexact definition of "executive function" does not lend itself to a catalog of activities encompassed by the definition; in general, a public body carries out an executive function whenever (1) it is not carrying out an advisory, legislative, quasi-legislative, or quasi-judicial function; and (2) it is engaged in any part of the process of implementing a statute or other form of preexisting law. 78 Op. Att'y Gen. 275 (July 28, 1993).

The Open Meetings Act does not apply to the Commissioners of Poolesville when they are carrying out an executive function; furthermore, the Open Meetings Act does not require any type of notice if the Commissioners of Poolesville meet to carry out an executive function. 78 Op. Att'y Gen. 275 (July 28, 1993).

Increase in lottery payout deemed "legislative function." - An increase in the prize payout to daily lottery winners made by the State Lottery Commission is the approval of a measure to set public policy and must be considered the exercise of a legislative, and not an executive, function. 64 Op. Att'y Gen. 208 (1979).

State Lottery Commission is "public body.", 64 Op. Att'y Gen. 208 (1979).

Salisbury Zoo Commission is a "public body." - Because the Mayor and City Council exercise veto power over the decisions of the Salisbury Zoo Commission, review the budget of the Commission, subject the Commission to a yearly audit, appoint the Commission's members, and have the authority to dissolve the Commission altogether, the Commission is a "public body" for the purposes of Open Meetings Act and the Public Information Act. *Andy's Ice Cream, Inc. v. City of Salisbury*, 125 Md. App. 125, 724 A.2d 717 (1999), cert. denied, 353 Md. 473, 727 A.2d 382 (1999).

Applicability of Act to city's private development corporation. - City of Baltimore Development Corporation (BDC) is, in essence, a public body for the purposes of the Open Meetings Act, § 10-501et seq. of this subtitle, and it is an instrumentality of Baltimore City for the purposes of Maryland's Public Information Act (MPIA), § 10-602et seq. of this title. Though a private corporation, the BDC functioned as part of the City's exercise of its eminent domain powers and, therefore, constituted a public body and, since the MPIA did not require an entity be established by a statute for it to be subject to its provisions, the BDC was found to clearly act as an instrumentality of the City; therefore, the provisions of the MPIA applied to it. *City of Balt. Dev. Corp. v. Carmel Realty Assocs.*, 395 Md. 299, 910 A.2d 406 (2006).
Development contract between Baltimore, Maryland, and the Baltimore Development Corporation (BDC) was not ultra vires because the board of the BDC was a "suitable board," under Baltimore City, Md., Charter art. II, § 15(g) since the board was sufficiently subject to city control that the board had to comply with the Open Meetings Act, under this subtitle. *120 W. Fayette St., LLLP v. Mayor & City Council of Balt. City*, 413 Md. 309, 992 A.2d 459 (2010).

University task force. - University task force relating to academics and student athletes was not created by a rule, resolution, or bylaws of the board of regents, but was an investigatory body wholly under the province of the chancellor, and not subject to the Open Meetings Act. *A.S. Abell Publishing Co. v. Board of Regents*, 68 Md. App. 500, 514 A.2d 25 (1986).

Open meetings requirements for St. Mary's County board of education. - County boards of education need not meet in open session when they are performing an "administrative function" and when the State education law does not otherwise require an open meeting. Unlike other local

boards of education, the St. Mary's Board is also subject to the St. Mary's Open Meetings Act ("St. Mary's OMA"). The St. Mary's OMA does not have a specific exclusion for an "administrative function," but has different limitations on its scope; therefore, it must meet in open session for many, if not most, activities that would qualify as an administrative function under the State Open Meetings Act (OMA) and for which another local board of education could legally meet in closed session. However, some activities that are an administrative function under the State OMA and that are outside the scope of the open meeting requirements of the State education law are also outside the scope of the county's OMA. One example would be a session in which the Superintendent or other staff report to the Board solely for informational purposes on matters within the Superintendent's purview, so long as the briefing involved no formulation of substantive policy and did not require any action by the Board. Such a briefing would not only be an administrative function under the State OMA, and outside the scope of the State education law's open meeting requirements, but would also not meet the definition of "official action" that triggers the open meeting. 95 Op. Atty. Gen. 138 (Sept. 7, 2010).

Applied in *City of College Park v. Cotter*, 309 Md. 573, 525 A.2d 1059 (1987); *J.P. Delphey L.P. v. Mayor of Frederick*, 396 Md. 180, 913 A.2d 28 (2006).

Quoted in *Walker v. Haywood*, 65 Md. App. 1, 498 A.2d 1198 (1985); *Ajamian v. Montgomery County*, 99 Md. App. 665, 639 A.2d 157, cert. denied, 334 Md. 631, 640 A.2d 1132 (1994); *Tribbitt v. State*, 403 Md. 638, 943 A.2d 1260 (2008), cert. denied, 129 S. Ct. 132, 2008 U.S. LEXIS 6451, 172 L. Ed. 2d 38 (U.S. 2008).

Cited in *Attman/Glazer P.B. Co. v. Mayor of Annapolis*, 314 Md. 675, 552 A.2d 1277 (1989); *Sugarloaf Citizens Ass'n v. Northeast Md. Waste Disposal Auth.*, 323 Md. 641, 594 A.2d 1115 (1991); *Baltimore County v. Wesley Chapel Bluemount Ass'n*, 110 Md. App. 585, 678 A.2d 100 (1996); *Handley v. Ocean Downs, LLC*, 151 Md. App. 615, 827 A.2d 961 (2003); *Cmty. & Labor United for Balt. Charter Comm. v. Balt. City Bd. of Elections*, 377 Md. 183, 832 A.2d 804 (2003); *1000 Friends of Md. v. Ehrlich*, 170 Md. App. 538, 907 A.2d 865 (2006), cert. denied, 912 A.2d 648, 2006 Md. LEXIS 902 (2006).

§ 10-502.1. State Open Meetings Law Compliance Board.

There is a State Open Meetings Law Compliance Board.

[1991, ch. 655.]

Open meetings requirements for St. Mary's County board of education. - County boards of education need not meet in open session when they are performing an "administrative function" and when the State education law does not otherwise require an open meeting. Unlike other local boards of education, the St. Mary's Board is also subject to the St. Mary's Open Meetings Act ("St. Mary's OMA"). The St. Mary's OMA does not have a specific exclusion for an "administrative function," but has different limitations on its scope; therefore, it must meet in open session for many, if not most, activities that would qualify as an administrative function under the State Open Meetings Act (OMA) and for which another local board of education could legally meet in closed session. However, some activities that are an administrative function under the State OMA and that are outside the scope of the open meeting requirements of the State education law are also outside the scope of the county's OMA. One example would be a session in which the Superintendent or other staff report to the Board solely for informational purposes on matters within the Superintendent's purview, so long as the briefing involved no formulation of substantive

policy and did not require any action by the Board. Such a briefing would not only be an administrative function under the State OMA, and outside the scope of the State education law's open meeting requirements, but would also not meet the definition of "official action" that triggers the open meeting. 95 Op. Atty. Gen. 138 (Sept. 7, 2010).

§ 10-502.2. Membership.

(a) *Composition; chairman.-*

(1) The Board consists of 3 members, at least one of whom shall be an attorney admitted to the Maryland Bar, appointed by the Governor with the advice and consent of the Senate.

(2) From among the members of the Board, the Governor shall appoint a chairman.

(b) *Term; tenure.-*

(1) The term of a member is 3 years.

(2) The terms of members are staggered as required by the terms provided for members of the Board on July 1, 1991.

(3) At the end of a term, a member continues to serve until a successor is appointed.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed.

(5) A member may not serve for more than 2 consecutive 3-year terms.

[1991, ch. 655.]

§ 10-502.3. Quorum; meetings; compensation.

(a) *Quorum.-* A majority of the full authorized membership of the Board is a quorum.

(b) *Meetings.-* The Board shall meet at a time and place to be determined by the Board.

(c) *Compensation; reimbursement.-* Each member of the Board:

(1) may not receive compensation; and

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(d) *Staff.-* The Office of the Attorney General shall provide staff for the Board.

[1991, ch. 655.]

§ 10-502.4. Duties.

(a) *Complaints; issue a written opinion.-* The Board shall receive, review, and resolve complaints from any person alleging a violation of the provisions of this subtitle and issue a written opinion as to whether a violation has occurred.

(b) *Complaints; review of prospective violations.-* The Board shall receive and review

any complaint alleging a prospective violation of the provisions of this subtitle as provided under § 10-502.6 of this subtitle.

(c) *Compliance; recommendations.*- The Board shall study ongoing compliance with the provisions of this subtitle by public bodies and make recommendations to the General Assembly for improvements in this subtitle.

(d) *Educational programs.*- The Board, in conjunction with the Office of the Attorney General and other interested organizations or persons, shall develop and conduct educational programs on the requirements of the open meetings law for the staffs and attorneys of:

- (1) public bodies;
- (2) the Maryland Municipal League; and
- (3) the Maryland Association of Counties.

(e) *Annual report.*-

(1) On or before October 1 of each year, the Board shall submit an annual report to the Governor and the General Assembly in accordance with § 2-1246 of this article.

(2) The report shall include a description of:

- (i) the activities of the Board;
- (ii) the opinions of the Board in any cases brought before it;
- (iii) the number and nature of complaints filed with the Board, including a discussion of complaints concerning the reasonableness of the notice provided for meetings; and
- (iv) any recommendations for improvements to the provisions of this subtitle.

[1991, ch. 655; 2002, ch. 56; 2003, ch. 21, § 1.]

Cited in ; *Handley v. Ocean Downs, LLC*, 151 Md. App. 615, 827 A.2d 961 (2003).

§ 10-502.5. Complaint.

(a) *In general.*- Any person may file a written complaint with the Board seeking a written opinion from the Board on the application of the provisions of this subtitle to the action of a public body covered by this subtitle.

(b) *Contents.*- The complaint shall:

- (1) be signed by the person making the complaint; and
- (2) identify the public body, specify the action of the public body, the date of the action, and the circumstances of the action.

(c) *Receipt of complaint; response.*-

(1) On receipt of the written complaint, and except as provided in paragraph (3) of this subsection, the Board shall promptly send the complaint to the public body identified in the complaint and request that a response to the complaint be sent to the Board.

(2) (i) The public body shall file a written response to the complaint within 30 days of its receipt of the complaint.

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

1. a notice provided under § 10-506 of this subtitle;
 2. a written statement made under § 10-508(d)(2)(ii) of this subtitle; and
 3. minutes and any tape recording made by the public body under § 10-509 of this subtitle.
- (iii) The Board shall maintain the confidentiality of minutes and any tape recording submitted by a public body that are sealed in accordance with § 10-509(c)(3)(ii) of this subtitle.
- (3) (i) If the public body identified in the complaint no longer exists, the Board shall promptly send the complaint to the official or entity that appointed the public body.
- (ii) The official or entity that appointed the public body shall, to the extent feasible, comply with the requirements of paragraph (2) of this subsection.
- (4) If after 45 days, a written response is not received, the Board shall decide the case on the facts before it.
- (d) *Duties of Board.*- The Board shall:
- (1) review the complaint and any response; and
 - (2) if the information in the complaint and response is sufficient to permit a determination, issue a written opinion as to whether a violation of the provisions of this subtitle has occurred or will occur not later than 30 days after receiving the response.
- (e) *Informal conference; written opinion.*-
- (1) If the Board is unable to reach a determination based on the written submissions before it, the Board may schedule an informal conference to hear from the complainant, the public body, or any other person with relevant information about the subject of the complaint.
 - (2) An informal conference scheduled by the Board is not a "contested case" within the meaning of § 10-202(d) of this title.
 - (3) The Board shall issue a written opinion not later than 30 days following the informal conference.
- (f) *Board unable to render opinion within specified time periods.*-
- (1) If the Board is unable to render an opinion on a complaint within the time periods specified in subsection (d) or (e) of this section, the Board shall:
 - (i) state in writing the reason for its inability; and
 - (ii) issue an opinion as soon as possible but not later than 90 days after the filing of the complaint.
 - (2) An opinion of the Board may state that the Board is unable to resolve the complaint.
- (g) *Who shall receive written opinion.*- The Board shall send a copy of the written opinion to the complainant and to the affected public body.
- (h) *Periodic written opinions.*-
- (1) On a periodic basis, the Board may send to any public body in the State any written opinion that will provide the public body with guidance on compliance with the provisions of this subtitle.
 - (2) On request, a copy of a written opinion shall be provided to any person.
- (i) *Nature of written opinion.*-
- (1) The opinions of the Board are advisory only.
 - (2) The Board may not require or compel any specific actions by a public body.

(j) *Admissibility of a written opinion.*- A written opinion issued by the Board may not be introduced as evidence in a proceeding conducted in accordance with § 10-510 of this subtitle.

[1991, ch. 655; 1996, ch. 10, § 1; 2004, ch. 25, § 6; ch. 440; 2007, ch. 643.]

Effect of amendments. Chapter 440, Acts 2004, effective Oct. 1, 2004, added (c)(2)(ii) and (iii). Chapter 643, Acts 2007, effective July 1, 2007, added "and except ... this subsection" in (c)(1); added (c)(3) and redesignated accordingly; and in (c)(4), deleted "the public body has not filed" proceeding "a written response" and added "is not received".

Editor's note. Section 6, ch. 25, Acts 2004, provides that "the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, at the time of publication of a new volume or a replacement volume of the Annotated Code, shall make nonsubstantive corrections to codification, style, capitalization, punctuation, grammar, spelling, and any reference rendered obsolete by an Act of the General Assembly, with no further action required by the General Assembly." Pursuant to § 6 of ch. 25, "of this title" was substituted for "of this article" in (e)(2).

§ 10-502.6. Complaint - Prospective violation.

(a) *In general.*- On receipt of an oral or written complaint by any person that a meeting required to be open under the provisions of this subtitle will be closed in violation of this subtitle, the Board acting through its chairman, a designated Board member, or any authorized staff person available to the Board may contact the public body to determine the nature of the meeting that will be held and the reason for the expected closure of the meeting.

(b) *Notice of potential violation.*- When at least 2 members of the Board conclude that a violation of this subtitle may occur if the closed meeting is held, the person acting for the Board under subsection (a) of this section immediately shall inform the public body of the potential violation and any lawful means that are available for conducting its meeting to achieve the purposes of the public body.

(c) *Notice to complainant.*- The person acting for the Board shall inform the person who filed the complaint under subsection (a) of this section of the result of any effort to achieve compliance with this subtitle under subsection (b) of this section.

(d) *Written report.*- The person acting for the Board shall file a written report with the Board describing the complaint, the effort to achieve compliance, and the results of the effort.

(e) *Effect of complaint and action by Board.*- The filing of a complaint under subsection (a) of this section and action by a person acting for the Board under subsections (b), (c), and (d) of this section may not prevent or bar the Board from considering and acting on a written complaint filed in accordance with § 10-502.5 of this subtitle.

[1991, ch. 655; 1992, ch. 22, § 3.]

§ 10-503. Scope of subtitle; administrative function meetings.

(a) *Not applicable.*- Except as provided in subsections (b) and (c) of this section, this subtitle does not apply to:

(1) a public body when it is carrying out:

(i) an administrative function;

(ii) a judicial function; or

(iii) a quasi-judicial function; or

(2) a chance encounter, social gathering, or other occasion that is not intended to circumvent this subtitle.

(b) *Applicable.*- The provisions of this subtitle apply to a public body when it is meeting to consider:

(1) granting a license or permit; or

(2) a special exception, variance, conditional use, zoning classification, the enforcement of any zoning law or regulation, or any other zoning matter.

(c) *Requirements for administrative function meeting not open to public.*- 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 shall 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.

[An. Code 1957, art. 76A, §§ 8, 9; 1984, ch. 284, § 1; ch. 285, § 8; 1991, ch. 655; 2006, ch. 584.]

Conflict with federal law. - To the extent that the State Open Meetings Act stands as an obstacle to the accomplishment of the full purposes and objectives of the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601 et seq., it may not be enforced. *Potomac Group Home Corp. v. Montgomery County*, 823 F. Supp. 1285 (D. Md. 1993).

Repeal of duplicative statutory provisions as part of code revision. - Certain statutory provisions enacted in 1954 which are, in large part, duplicative of the Open Meetings Act may be repealed as part of code revision without effecting a substantive change in the law. However, the final clause of each provision that states that "no ordinance, resolution, rule or regulation shall be finally adopted at [a meeting not open to the public]" should be retained. 94 Op. Att'y Gen. 161 (Sept. 29, 2009).

Meetings of Thoroughbred Racing Board. - The Thoroughbred Racing Board's award of racing dates is an executive function, subject to the Governor's Executive Order on Opening Meetings; however, a decision to permit Sunday racing is subject to the statutory provisions requiring open public meetings. 65 Op. Att'y Gen. 396 (1980).

Increase in lottery prize not executive function. - An increase in the prize payout to daily lottery winners made by the State Lottery Commission is the approval of a measure to set public policy and must be considered the exercise of a legislative, and not an executive, function. 64 Op. Att'y Gen. 208 (1979).

Open meetings not required. - Patuxent Institution Board of Review is not required to open its meetings, since it exercises an executive or quasi-judicial function. 65 Op. Att'y Gen. 341 (1980).

Open meetings requirements for St. Mary's County board of education. - County boards of education need not meet in open session when they are performing an "administrative function" and when the State education law does not otherwise require an open meeting. Unlike other local boards of education, the St. Mary's Board is also subject to the St. Mary's Open Meetings Act ("St. Mary's OMA"). The St. Mary's OMA does not have a specific exclusion for an "administrative function," but has different limitations on its scope; therefore, it must meet in open session for many, if not most, activities that would qualify as an administrative function under the State Open Meetings Act (OMA) and for which another local board of education could legally meet in closed session. However, some activities that are an administrative function under the State OMA and that are outside the scope of the open meeting requirements of the State education law are also outside the scope of the county's OMA. One example would be a session in which the Superintendent or other staff report to the Board solely for informational purposes on matters within the Superintendent's purview, so long as the briefing involved no formulation of substantive policy and did not require any action by the Board. Such a briefing would not only be an administrative function under the State OMA, and outside the scope of the State education law's open meeting requirements, but would also not meet the definition of "official action" that triggers the open meeting. 95 Op. Atty. Gen. 138 (Sept. 7, 2010).

Pending completion of groundwater studies is not a "zoning matter." - Contention that the development could not proceed until completion of certain groundwater studies was not a "zoning matter." *Baltimore County v. Wesley Chapel Bluemount Ass'n*, 110 Md. App. 585, 678 A.2d 100 (1996).

Power to regulate density is not a "zoning matter." - The fact that the zoning power includes the power to regulate density does not mean that all issues that happen to involve density are necessarily "zoning matters." Density issues may arise in other contexts; when density issues arise in other contexts, those proceedings are not transformed into zoning matters simply because of the presence of the density issues. *Baltimore County v. Wesley Chapel Bluemount Ass'n*, 110 Md. App. 585, 678 A.2d 100 (1996).

Subdivision development plan is "zoning matter." - A county board of appeals is required to conduct, in open session, its deliberations regarding consideration of a development plan, which has a very close nexus to zoning and constitutes an "other zoning matter" under paragraph (b) (2). *Wesley Chapel Bluemount Ass'n v. Baltimore County*, 347 Md. 125, 699 A.2d 434 (1997).

Quoted in *Ajamian v. Montgomery County*, 99 Md. App. 665, 639 A.2d 157, cert. denied, 334 Md. 631, 640 A.2d 1132 (1994); *Handley v. Ocean Downs, LLC*, 151 Md. App. 615, 827 A.2d 961 (2003).

Cited in *Sugarloaf Citizens Ass'n v. Northeast Md. Waste Disposal Auth.*, 323 Md. 641, 594 A.2d 1115 (1991); *Cnty. & Labor United for Balt. Charter Comm. v. Balt. City Bd. of Elections*, 377 Md. 183, 832 A.2d 804 (2003); *Md. Overpak Corp. v. Mayor of Baltimore*, 395 Md. 16, 909 A.2d 235 (2006).

§ 10-504. Conflict of laws.

Whenever this subtitle and another law that relates to meetings of public bodies conflict, this subtitle applies unless the other law is more stringent.

[An. Code 1957, art. 76A, § 15; 1984, ch. 284, § 1; 1991, ch. 655; 2003, ch. 132.]

Waiver of attorney-client privilege. - This section provides legislative authority for a public body to waive its attorney-client privilege by flatly prohibiting closed meetings in the municipal charter. *City of College Park v. Cotter*, 309 Md. 573, 525 A.2d 1059 (1987).

Open meetings requirements for St. Mary's County board of education. - County boards of education need not meet in open session when they are performing an "administrative function" and when the State education law does not otherwise require an open meeting. Unlike other local boards of education, the St. Mary's Board is also subject to the St. Mary's Open Meetings Act ("St. Mary's OMA"). The St. Mary's OMA does not have a specific exclusion for an "administrative function," but has different limitations on its scope; therefore, it must meet in open session for many, if not most, activities that would qualify as an administrative function under the State Open Meetings Act (OMA) and for which another local board of education could legally meet in closed session. However, some activities that are an administrative function under the State OMA and that are outside the scope of the open meeting requirements of the State education law are also outside the scope of the county's OMA. One example would be a session in which the Superintendent or other staff report to the Board solely for informational purposes on matters within the Superintendent's purview, so long as the briefing involved no formulation of substantive policy and did not require any action by the Board. Such a briefing would not only be an administrative function under the State OMA, and outside the scope of the State education law's open meeting requirements, but would also not meet the definition of "official action" that triggers the open meeting. 95 Op. Atty. Gen. 138 (Sept. 7, 2010).

Quoted in *Andy's Ice Cream, Inc. v. City of Salisbury*, 125 Md. App. 125, 724 A.2d 717 (1999), cert. denied, 353 Md. 473, 727 A.2d 382 (1999).

§ 10-505. Open sessions generally required.

Except as otherwise expressly provided in this subtitle, a public body shall meet in open session.

[An. Code 1957, art. 76A, §§ 9, 10; 1984, ch. 284, § 1; 1991, ch. 655.]

Thoroughbred Racing Board. - Thoroughbred Racing Board's decision to permit Sunday racing is a decision that should be arrived at in an open public meeting. 65 Op. Atty Gen. 396 (1980).

County board of education may unilaterally determine to hold open meetings. - A county board of education may determine unilaterally to conduct collective bargaining negotiations at meetings open to the public. *Carroll County Educ. Ass'n v. Board of Educ.*, 294 Md. 144, 448 A.2d 345 (1982).

Open sessions for development plans. - A county board of appeals is required to conduct, in open session, its deliberations regarding consideration of a development plan, which has a very close nexus to zoning and constitutes an "other zoning matter" under § 10-503 (b) (2). *Wesley Chapel Bluemount Ass'n v. Baltimore County*, 347 Md. 125, 699 A.2d 434 (1997).

Private groups holding meetings in public buildings. - A county may allow private groups to hold meetings in public buildings; a group holding such a meeting may bar uninvited members of the public, including members of the press. 80 Op. Att'y Gen. 90 (August 4, 1995).

Inapplicable to e-mail - The Open Meetings Act does not apply to e-mail communications among members of a public body, unless a quorum of a public body is engaged in a simultaneous exchange of e-mail on a matter of public business. 81 Op. Att'y Gen. 140 (May 22, 1996).

Specific findings regarding open meetings. - If a circuit court voids or vacates an action taken by a county board of appeals, it must make specific findings regarding whether the conditions of the Open Meetings Law were violated when the action was taken by the board. Wesley Chapel Bluemount Ass'n v. Baltimore County, 347 Md. 125, 699 A.2d 434 (1997).

Open meetings requirements for St. Mary's County board of education. - County boards of education need not meet in open session when they are performing an "administrative function" and when the State education law does not otherwise require an open meeting. Unlike other local boards of education, the St. Mary's Board is also subject to the St. Mary's Open Meetings Act ("St. Mary's OMA"). The St. Mary's OMA does not have a specific exclusion for an "administrative function," but has different limitations on its scope; therefore, it must meet in open session for many, if not most, activities that would qualify as an administrative function under the State Open Meetings Act (OMA) and for which another local board of education could legally meet in closed session. However, some activities that are an administrative function under the State OMA and that are outside the scope of the open meeting requirements of the State education law are also outside the scope of the county's OMA. One example would be a session in which the Superintendent or other staff report to the Board solely for informational purposes on matters within the Superintendent's purview, so long as the briefing involved no formulation of substantive policy and did not require any action by the Board. Such a briefing would not only be an administrative function under the State OMA, and outside the scope of the State education law's open meeting requirements, but would also not meet the definition of "official action" that triggers the open meeting. 95 Op. Atty. Gen. 138 (Sept. 7, 2010).

Repeal of duplicative statutory provisions as part of code revision. - Certain statutory provisions enacted in 1954 which are, in large part, duplicative of the Open Meetings Act may be repealed as part of code revision without effecting a substantive change in the law. However, the final clause of each provision that states that "no ordinance, resolution, rule or regulation shall be finally adopted at [a meeting not open to the public]" should be retained. 94 Op. Att'y Gen. 161 (Sept. 29, 2009).

Sanctions for violations - Where a city council wished to debate the issue of restructuring the council at a special meeting, but did not provide adequate notice of the time and location of the meeting to the public under this section, the action it took at the meeting was declared to be void. Cmty. & Labor United for Balt. Charter Comm. v. Balt. City Bd. of Elections, 377 Md. 183, 832 A.2d 804 (2003).

Applied in *Malamis v. Stein*, 69 Md. App. 221, 516 A.2d 1039 (1986); *City of College Park v. Cotter*, 309 Md. 573, 525 A.2d 1059 (1987).

Quoted in *Ajamian v. Montgomery County*, 99 Md. App. 665, 639 A.2d 157, cert. denied, 334 Md. 631, 640 A.2d 1132 (1994); *Andy's Ice Cream, Inc. v. City of Salisbury*, 125 Md. App. 125, 724 A.2d 717 (1999), cert. denied, 353 Md. 473, 727 A.2d 382 (1999).

Stated in Broadcast Equities v. Montgomery County, 123 Md. App. 363, 718 A.2d 648 (1998).

Cited in Armstrong v. Mayor of Baltimore, 409 Md. 648, 976 A.2d 349 (2009).

§ 10-506. Notice of open session.

(a) *Required.*- Before meeting in a closed or open session, a public body shall give reasonable advance notice of the session.

(b) *Form.*- Whenever reasonable, a notice under this section shall:

(1) be in writing;

(2) include the date, time, and place of the session; and

(3) if appropriate, include a statement that a part or all of a meeting may be conducted in closed session.

(c) *Method.*- A public body may give the notice under this section as follows:

(1) if the public body is a unit of the State government, by publication in the Maryland Register;

(2) by delivery to representatives of the news media who regularly report on sessions of the public body or the activities of the government of which the public body is a part;

(3) if the public body previously has given public notice that this method will be used:

(i) by posting or depositing the notice at a convenient public location at or near the place of the session; or

(ii) by posting the notice on an Internet website ordinarily used by the public body to provide information to the public; or

(4) by any other reasonable method.

(d) *Copy of notice.*- A public body shall keep a copy of a notice provided under this section for at least 1 year after the date of the session.

[An. Code 1957, art. 76A, § 12; 1984, ch. 284, § 1; ch. 285, § 8; 1991, ch. 655; 2004, ch. 440; 2007, ch. 643.]

Effect of amendments. Chapter 643, Acts 2007, effective July 1, 2007, added (c)(3)(ii) and made related changes.

Specific statement of open meeting not required. - Notice of a meeting need not contain a specific statement that the meeting is open to the general public. *City of New Carrollton v. Rogers*, 287 Md. 56, 410 A.2d 1070 (1980).

Open meetings requirements for St. Mary's County board of education. - County boards of education need not meet in open session when they are performing an "administrative function" and when the State education law does not otherwise require an open meeting. Unlike other local boards of education, the St. Mary's Board is also subject to the St. Mary's Open Meetings Act ("St. Mary's OMA"). The St. Mary's OMA does not have a specific exclusion for an "administrative function," but has different limitations on its scope; therefore, it must meet in open session for many, if not most, activities that would qualify as an administrative function under the State Open Meetings Act (OMA) and for which another local board of education could legally meet in closed session. However, some activities that are an administrative function under the State OMA and

that are outside the scope of the open meeting requirements of the State education law are also outside the scope of the county's OMA. One example would be a session in which the Superintendent or other staff report to the Board solely for informational purposes on matters within the Superintendent's purview, so long as the briefing involved no formulation of substantive policy and did not require any action by the Board. Such a briefing would not only be an administrative function under the State OMA, and outside the scope of the State education law's open meeting requirements, but would also not meet the definition of "official action" that triggers the open meeting. 95 Op. Atty. Gen. 138 (Sept. 7, 2010).

Notice held sufficient. - Where information of a levy hearing, although not conveyed by formal notice, was apparently communicated to members of the press and advance notice of the meeting was given to the public, the notice provisions were not violated. 64 Op. Atty Gen. 20 (1979).

Required notice not given - Where a city council wished to debate the issue of restructuring the council at a special meeting, but did not provide adequate notice of the time and location of the meeting to the public under this section, the action it took at the meeting was declared to be void. Cmty. & Labor United for Balt. Charter Comm. v. Balt. City Bd. of Elections, 377 Md. 183, 832 A.2d 804 (2003).

Inapplicable to e-mail. - The Open Meetings Act does not apply to e-mail communications among members of a public body, unless a quorum of a public body is engaged in a simultaneous exchange of e-mail on a matter of public business. 81 Op. Att'y Gen. 140 (May 22, 1996).

Applied in *Malamis v. Stein*, 69 Md. App. 221, 516 A.2d 1039 (1986); *City of College Park v. Cotter*, 309 Md. 573, 525 A.2d 1059 (1987).

Quoted in *Ajamian v. Montgomery County*, 99 Md. App. 665, 639 A.2d 157, cert. denied, 334 Md. 631, 640 A.2d 1132 (1994); *Andy's Ice Cream, Inc. v. City of Salisbury*, 125 Md. App. 125, 724 A.2d 717 (1999), cert. denied, 353 Md. 473, 727 A.2d 382 (1999); *Handley v. Ocean Downs, LLC*, 151 Md. App. 615, 827 A.2d 961 (2003).

Stated in *Broadcast Equities v. Montgomery County*, 123 Md. App. 363, 718 A.2d 648 (1998).

Cited in *Armstrong v. Mayor of Baltimore*, 409 Md. 648, 976 A.2d 349 (2009).

§ 10-507. Attendance at open session.

(a) *In general.*- Whenever a public body meets in open session, the general public is entitled to attend.

(b) *Rules.*- A public body shall adopt and enforce reasonable rules regarding the conduct of persons attending its meetings and the videotaping, televising, photographing, broadcasting, or recording of its meetings.

(c) *Removal of individuals.*-

(1) If the presiding officer determines that the behavior of an individual is disrupting an open session, the public body may have the individual removed.

(2) Unless the public body or its members or agents acted maliciously, the public body, members, and agents are not liable for having an individual removed under this

subsection.

[An. Code 1957, art. 76A, § 10; 1984, ch. 284, § 1; 1991, ch. 655.]

Admission of public to juvenile facility. - The Open Meetings Act does not require the Department of Juvenile Services to admit members of the public to a juvenile facility; if the Department chooses to exercise its discretion to exclude members of the public from a facility, the Open Meetings Act would require a legislative committee to hold an open meeting elsewhere. 78 Op. Att'y Gen. 240 (1993).

Inapplicable to e-mail - The Open Meetings Act does not apply to e-mail communications among members of a public body, unless a quorum of a public body is engaged in a simultaneous exchange of e-mail on a matter of public business. 81 Op. Att'y Gen. 140 (May 22, 1996).

Applied in *City of College Park v. Cotter*, 309 Md. 573, 525 A.2d 1059 (1987).

Quoted in *Ajamian v. Montgomery County*, 99 Md. App. 665, 639 A.2d 157, cert. denied, 334 Md. 631, 640 A.2d 1132 (1994); *Andy's Ice Cream, Inc. v. City of Salisbury*, 125 Md. App. 125, 724 A.2d 717 (1999), cert. denied, 353 Md. 473, 727 A.2d 382 (1999).

Cited in *Cnty. & Labor United for Balt. Charter Comm. v. Balt. City Bd. of Elections*, 377 Md. 183, 832 A.2d 804 (2003); *Armstrong v. Mayor of Baltimore*, 409 Md. 648, 976 A.2d 349 (2009).

§ 10-507.1. Interpreters.

(a) *Scope.*- This section applies only to the Executive and Legislative branches of State government.

(b) *In general.*-

(1) On request and to the extent feasible, a unit that holds a public hearing shall provide a qualified interpreter to assist deaf persons to understand the proceeding.

(2) The request must be submitted in writing or by telecommunication at least 5 days before the proceeding begins.

(3) Whether providing an interpreter is feasible shall be determined, in each instance, by the unit involved.

[An. Code 1957, art. 30, § 2; 1997, ch. 31, § 1; 2004, ch. 25, § 6.]

§ 10-508. Closed sessions permitted.

(a) *In general.*- Subject to the provisions of subsection (d) of this section, a public body may meet in closed session or adjourn an open session to a closed session only to:

(1) discuss:

(i) the appointment, employment, assignment, promotion, discipline, demotion,

compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom it has jurisdiction; or

(ii) any other personnel matter that affects 1 or more specific individuals;

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

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

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

(5) consider the investment of public funds;

(6) consider the marketing of public securities;

(7) consult with counsel to obtain legal advice;

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

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

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

(i) the deployment of fire and police services and staff; and

(ii) the development and implementation of emergency plans;

(11) prepare, administer, or grade a scholastic, licensing, or qualifying examination;

(12) conduct or discuss an investigative proceeding on actual or possible criminal conduct;

(13) comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter; or

(14) before a contract is awarded or bids are opened, discuss a matter directly related to a negotiating 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) *Limitation.*- A public body that meets in closed session under this section may not discuss or act on any matter not permitted under subsection (a) of this section.

(c) *Construction.*- The exceptions in subsection (a) of this section shall be strictly construed in favor of open meetings of public bodies.

(d) *Vote; written statement.*-

(1) Unless a majority of the members of a public body present and voting vote in favor of closing the session, the public body may not meet in closed session.

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

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

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

(3) If a person objects to the closing of a session, the public body shall send a copy of the written statement required under paragraph (2) of this subsection to the Board.

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

(5) A public body shall keep a copy of the written statement made under paragraph (2)(ii)

of this subsection for at least 1 year after the date of the session.

[An. Code 1957, art. 76A, § 11; 1984, ch. 284, § 1; 1991, ch. 655; 2004, ch. 440.]

University of Baltimore Law Forum. For note, "Recent Development: J.P. Delphey Ltd. P'shp v. Mayor & City of Frederick: Due to an Exception in the Open Meetings Act, Municipal Governments with Legislative Powers Can Vote to Condemn Property in a Closed Executive Session without Enacting a Property-Specific Ordinance," see; 37 U. Balt. L.F. 134 (2007).

Conflict of laws. - Contention that this section should be read into a municipal charter provision which flatly prohibited closed meetings was rejected due to the impact of § 10-504 of this subtitle. *City of College Park v. Cotter*, 309 Md. 573, 525 A.2d 1059 (1987).

Repeal of duplicative statutory provisions as part of code revision. - Certain statutory provisions enacted in 1954 which are, in large part, duplicative of the Open Meetings Act may be repealed as part of code revision without effecting a substantive change in the law. However, the final clause of each provision that states that "no ordinance, resolution, rule or regulation shall be finally adopted at [a meeting not open to the public]" should be retained. 94 Op. Att'y Gen. 161 (Sept. 29, 2009).

Waiver of attorney-client privilege. - Section 10-504 of this subtitle provides legislative authority for a public body to waive its attorney-client privilege by flatly prohibiting closed meetings in the municipal charter. *City of College Park v. Cotter*, 309 Md. 573, 525 A.2d 1059 (1987).

Inapplicable to e-mail. - The Open Meetings Act does not apply to e-mail communications among members of a public body, unless a quorum of a public body is engaged in a simultaneous exchange of e-mail on a matter of public business. 81 Op. Att'y Gen. 140 (May 22, 1996).

Closed session was acceptable. - Municipality's vote to condemn an owner's real property constituted a proper exercise of the authority vested in that legislative body by Article 23A, § 2(b) (24) of the Code, and the municipality's city charter, with no ordinance or legislative act specific to the property being required. As such, the municipality did not violate this section of the Open Meetings Act, when it voted to condemn the property in a closed session. *J.P. Delphey L.P. v. Mayor of Frederick*, 396 Md. 180, 913 A.2d 28 (2006).

Remand to determine validity of closing session - Appellate court remanded for consideration of the merits of whether a zoning board had acted improperly in closing a meeting for a time before voting to grant a special use permit for an off-track betting parlor; the trial court had erred in holding that the issue was not reviewable because the concerned citizens had failed to petition for review within 45 days, since they were not precluded from seeking judicial review of an administrative decision in the normal way. *Handley v. Ocean Downs, LLC*, 151 Md. App. 615, 827 A.2d 961 (2003).

Improper closing of open hearing - Where a city council wished to debate the issue of restructuring the council at a special meeting, once a quorum had been established and the meeting had been declared open, pursuant to subsection (d)(2) of this section, the council president should not have closed the meeting without a vote and forced citizens and members of the media to leave the meeting room. *Cnty. & Labor United for Balt. Charter Comm. v. Balt. City Bd. of Elections*, 377 Md. 183, 832 A.2d 804 (2003).

When a school board president sued a law firm for disclosing the existence of a sexual harassment investigation of the president, (a) and Kent County, Md., School System Personnel

Procedure 300-2 did not support the president's position because neither document prohibited the school board or the school board's counsel from acknowledging the existence of an investigation involving claims of sexual harassment, especially when the information was already a matter of public record. *Haniffee v. Funk & Bolton, P.A.*, - Md. App. - , - A.2d - (May 22, 2009).

Open meetings requirements for St. Mary's County board of education. - County boards of education need not meet in open session when they are performing an "administrative function" and when the State education law does not otherwise require an open meeting. Unlike other local boards of education, the St. Mary's Board is also subject to the St. Mary's Open Meetings Act ("St. Mary's OMA"). The St. Mary's OMA does not have a specific exclusion for an "administrative function," but has different limitations on its scope; therefore, it must meet in open session for many, if not most, activities that would qualify as an administrative function under the State Open Meetings Act (OMA) and for which another local board of education could legally meet in closed session. However, some activities that are an administrative function under the State OMA and that are outside the scope of the open meeting requirements of the State education law are also outside the scope of the county's OMA. One example would be a session in which the Superintendent or other staff report to the Board solely for informational purposes on matters within the Superintendent's purview, so long as the briefing involved no formulation of substantive policy and did not require any action by the Board. Such a briefing would not only be an administrative function under the State OMA, and outside the scope of the State education law's open meeting requirements, but would also not meet the definition of "official action" that triggers the open meeting. 95 Op. Atty. Gen. 138 (Sept. 7, 2010).

Applied in *2BD Assocs. v. County Comm'rs*, 896 F. Supp. 528 (D. Md. 1995); *Baltimore County v. Wesley Chapel Bluemount Ass'n*, 110 Md. App. 585, 678 A.2d 100 (1996); *Wesley Chapel Bluemount Ass'n v. Baltimore County*, 347 Md. 125, 699 A.2d 434 (1997).

Quoted in *Ajamian v. Montgomery County*, 99 Md. App. 665, 639 A.2d 157, cert. denied, 334 Md. 631, 640 A.2d 1132 (1994).

Stated in *Andy's Ice Cream, Inc. v. City of Salisbury*, 125 Md. App. 125, 724 A.2d 717 (1999), cert. denied, 353 Md. 473, 727 A.2d 382 (1999).

Cited in *Armstrong v. Mayor of Baltimore*, 409 Md. 648, 976 A.2d 349 (2009).

§ 10-509. Minutes; tape recordings.

(a) *Scope of section.*- This section does not:

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

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

(b) *Required.*- As soon as practicable after a public body meets, it shall have written minutes of its session prepared.

(c) *Contents.*-

(1) The minutes shall reflect:

(i) each item that the public body considered;

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

(iii) each vote that was recorded.

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

- (i) a statement of the time, place, and purpose of the closed session;
- (ii) a record of the vote of each member as to closing the session;
- (iii) a citation of the authority under this subtitle for closing the session; and
- (iv) a listing of the topics of discussion, persons present, and each action taken during the session.

(3) (i) A session may be tape recorded by a public body.

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

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

- (i) for a meeting closed under § 10-508(a)(5) of this subtitle, when the public body invests the funds;
- (ii) for a meeting closed under § 10-508(a)(6) of this subtitle, when the public securities being discussed have been marketed; or
- (iii) on request of a person or on the public body's own initiative, if a majority of the members of the public body present and voting vote in favor of unsealing the minutes and any tape recording.

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

(e) *Retention of minutes or tape recordings.*- A public body shall keep a copy of the minutes of each session and any tape recording made under subsection (c)(3)(i) of this section for at least 1 year after the date of the session.

[An. Code 1957, art. 76A, §§ 11, 13; 1984, ch. 284, § 1; 1991, ch. 655; 2004, ch. 440; 2009, ch. 60, § 5.]

Editor's note. Pursuant to § 5, ch. 60, Acts 2009, "of this subtitle" was added after "§ 10-508(a)(5)" in (c)(4)(i) and after "§ 10-508(a)(6)" in (c)(4)(ii).

Inapplicable to e-mail - The Open Meetings Act does not apply to e-mail communications among members of a public body, unless a quorum of a public body is engaged in a simultaneous exchange of e-mail on a matter of public business. 81 Op. Att'y Gen. 140 (May 22, 1996).

Other available remedies. - Appellate court remanded for consideration of the merits of whether a zoning board had acted improperly in closing a meeting for a time before voting to grant a special use permit for an off-track betting parlor; the trial court had erred in holding that the issue was not reviewable because the concerned citizens had failed to petition for review within 45 days, since they were not precluded from seeking judicial review of an administrative decision in the normal way. *Handley v. Ocean Downs, LLC*, 151 Md. App. 615, 827 A.2d 961 (2003).

Open meetings requirements for St. Mary's County board of education. - County boards of education need not meet in open session when they are performing an "administrative function"

and when the State education law does not otherwise require an open meeting. Unlike other local boards of education, the St. Mary's Board is also subject to the St. Mary's Open Meetings Act ("St. Mary's OMA"). The St. Mary's OMA does not have a specific exclusion for an "administrative function," but has different limitations on its scope; therefore, it must meet in open session for many, if not most, activities that would qualify as an administrative function under the State Open Meetings Act (OMA) and for which another local board of education could legally meet in closed session. However, some activities that are an administrative function under the State OMA and that are outside the scope of the open meeting requirements of the State education law are also outside the scope of the county's OMA. One example would be a session in which the Superintendent or other staff report to the Board solely for informational purposes on matters within the Superintendent's purview, so long as the briefing involved no formulation of substantive policy and did not require any action by the Board. Such a briefing would not only be an administrative function under the State OMA, and outside the scope of the State education law's open meeting requirements, but would also not meet the definition of "official action" that triggers the open meeting. 95 Op. Atty. Gen. 138 (Sept. 7, 2010).

Applied in City of College Park v. Cotter, 309 Md. 573, 525 A.2d 1059 (1987).

Quoted in Cmty. & Labor United for Balt. Charter Comm. v. Balt. City Bd. of Elections, 377 Md. 183, 832 A.2d 804 (2003).

Stated in Andy's Ice Cream, Inc. v. City of Salisbury, 125 Md. App. 125, 724 A.2d 717 (1999), cert. denied, 353 Md. 473, 727 A.2d 382 (1999).

Cited in Armstrong v. Mayor of Baltimore, 409 Md. 648, 976 A.2d 349 (2009).

§ 10-510. Enforcement.

(a) *Scope of section.*-

(1) This section does not apply to the action of:

- (i) appropriating public funds;
- (ii) levying a tax; or
- (iii) providing for the issuance of bonds, notes, or other evidences of public obligation.

(2) This section does not authorize a court to void an action of a public body because of any violation of this subtitle by another public body.

(3) This section does not affect or prevent the use of any other available remedies.

(b) *Petition authorized.*-

(1) If a public body fails to comply with § 10-505, § 10-506, § 10-507, § 10-508, or § 10-509(c) of this subtitle any person may file with a circuit court that has venue a petition that asks the court to:

- (i) determine the applicability of those sections;
- (ii) require the public body to comply with those sections; or
- (iii) void the action of the public body.

(2) If a violation of § 10-506, § 10-508, or § 10-509(c) of this subtitle is alleged, the person shall file the petition within 45 days after the date of the alleged violation.

(3) If a violation of § 10-505 or § 10-507 of this subtitle is alleged, the person shall file the petition within 45 days after the public body includes in the minutes of an open

session the information specified in § 10-509(c)(2) of this subtitle.

(4) If a written complaint is filed with the Board in accordance with § 10-502.5 of this subtitle, the time between the filing of the complaint and the mailing of the written opinion to the complainant and the affected public body under § 10-502.5(g) of this subtitle may not be included in determining if a claim against a public body is barred by the statute of limitations set forth in paragraphs (2) and (3) of this subsection.

(c) *Presumption.*- In an action under this section, it is presumed that the public body did not violate any provision of this subtitle, and the complainant has the burden of proving the violation.

(d) *Authority of court.*- A court may:

(1) consolidate a proceeding under this section with another proceeding under this section or an appeal from the action of the public body;

(2) issue an injunction;

(3) determine the applicability of this subtitle to the discussions or decisions of public bodies;

(4) if the court finds that a public body willfully failed to comply with § 10-505, § 10-506, § 10-507, or § 10-509(c) of this subtitle and that no other remedy is adequate, declare void the final action of the public body;

(5) as part of its judgment:

(i) assess against any party reasonable counsel fees and other litigation expenses that the party who prevails in the action incurred; and

(ii) require a reasonable bond to ensure the payment of the assessment; and

(6) grant any other appropriate relief.

(e) *Petition.*-

(1) A person may file a petition under this section without seeking an opinion from the State Open Meetings Law Compliance Board.

(2) The failure of a person to file a complaint with the Board is not a ground for the court to either stay or dismiss a petition.

[An. Code 1957, art. 76A, § 14; 1984, ch. 284, § 1; 1991, ch. 655; 2004 Sp. Sess., chs. 1, 6.]

"Appropriating public funds." - The deliberations of the Budget Conference Committee in the process of enacting the budget bill into law fall within the "appropriating public funds" exception. *Avara v. Baltimore News Am. Div.*, 292 Md. 543, 440 A.2d 368 (1982).

Budget work session of board of county commissioners is within appropriations exception. *Board of County Comm'rs v. Landmark Community Newspapers of Md., Inc.*, 293 Md. 595, 446 A.2d 63 (1982).

Applicability of Act to city's private development corporation. - City of Baltimore Development Corporation (BDC) is, in essence, a public body for the purposes of the Open Meetings Act, § 10-501 et seq. of this subtitle, and it is an instrumentality of Baltimore City for the purposes of Maryland's Public Information Act (MPIA), § 10-602 et seq. of this title. Though a private corporation, the BDC functioned as part of the City's exercise of its eminent domain powers and, therefore, constituted a public body and, since the MPIA did not require an entity be established by a statute for it to be subject to its provisions, the BDC was found to clearly act as

an instrumentality of the City; therefore, the provisions of the MPIA applied to it. *City of Balt. Dev. Corp. v. Carmel Realty Assocs.*, 395 Md. 299, 910 A.2d 406 (2006).

Specific findings regarding open meetings. - If a circuit court voids or vacates an action taken by a county board of appeals, it must make specific findings regarding whether the conditions of the Open Meetings Law were violated when the action was taken by the board. *Wesley Chapel Bluemount Ass'n v. Baltimore County*, 347 Md. 125, 699 A.2d 434 (1997).

Condemnation of property. - Municipality's vote to condemn an owner's real property constituted a proper exercise of the authority vested in that legislative body by Article 23A, § 2(b) (24) of the Code, and the municipality's city charter, with no ordinance or legislative act specific to the property being required. As such, the municipality did not violate § 10-508 of this subtitle, the Open Meetings Act, when it voted to condemn the property in a closed session. *J.P. Delphay L.P. v. Mayor of Frederick*, 396 Md. 180, 913 A.2d 28 (2006).

Voiding action of public body. - Where a city council wished to debate the issue of restructuring the council at a special meeting, but did not provide adequate notice of the time and location of the meeting to the public under § 10-506 of this subtitle, the action it took at the meeting was declared to be void. *Cnty. & Labor United for Balt. Charter Comm. v. Balt. City Bd. of Elections*, 377 Md. 183, 832 A.2d 804 (2003).

Award of attorney's fees. - The General Assembly intended that trial judges determine, in their discretion, whether the circumstances warrant the award of attorney's fees or other expenses of litigation. *Malamis v. Stein*, 69 Md. App. 221, 516 A.2d 1039 (1986).

An assessment of attorney's fees under paragraph (d)(5) does not depend upon a finding of willfulness, nor are assessments to be automatic upon a finding of a violation of the Open Meetings Law, but courts should take into account the circumstances surrounding a violation. *Wesley Chapel Bluemount Ass'n v. Baltimore County*, 347 Md. 125, 699 A.2d 434 (1997).

Because an award of fees under this section is not mandatory, a presumption that attorney fees should be awarded to the prevailing party should not be applied. *Baltimore County v. Wesley Chapel Bluemount Ass'n*, 128 Md. App. 180, 736 A.2d 1177 (1999).

Even if a trial court finds that a party acted without animus, in good faith, and reasonably, it may still impose fee awards if it reasonably concludes that the circumstances justify such an award. *Baltimore County v. Wesley Chapel Bluemount Ass'n*, 128 Md. App. 180, 736 A.2d 1177 (1999).

Finding of willfulness not required for an award of counsel fees. - Maryland Open Meetings Act, under (d)(5), does not, on its face, require a finding of willfulness as a precondition to the assessment of counsel fees and litigation expenses. *Armstrong v. Mayor of Baltimore*, 409 Md. 648, 976 A.2d 349 (2009).

Change in prize payment structure of lottery violated open meeting provisions. - Where at an April 1979 meeting the State Lottery Commission approved an increase in the prize paid to daily lottery winners, effective July 29, 1979, adoption of this change in the prize payment structure violated the open meeting provisions because it occurred at an executive session or closed meeting. 64 Op. Att'y Gen. 208 (1979).

Applied in *City of College Park v. Cotter*, 309 Md. 573, 525 A.2d 1059 (1987); *Andy's Ice Cream, Inc. v. City of Salisbury*, 125 Md. App. 125, 724 A.2d 717 (1999), cert. denied, 353 Md. 473, 727 A.2d 382 (1999).

Cited in *Baltimore County v. Wesley Chapel Bluemount Ass'n*, 110 Md. App. 585, 678 A.2d 100 (1996).

§ 10-511. Penalty.

A member of a public body who willfully participates in a meeting of the body with knowledge that the meeting is being held in violation of the provisions of this subtitle is subject to a civil penalty not to exceed \$100.

[1991, ch. 655.]

Applied in; *Andy's Ice Cream, Inc. v. City of Salisbury*, 125 Md. App. 125, 724 A.2d 717 (1999), cert. denied, 353 Md. 473, 727 A.2d 382 (1999).

Cited in *Handley v. Ocean Downs, LLC*, 151 Md. App. 615, 827 A.2d 961 (2003).

§ 10-512. Short title.

This subtitle may be cited as the "Open Meetings Act".

[1991, ch. 655.]

Court declined to hear issue on Open Meetings Act. - In an action by a former town councilwoman against a town councilman and a town, the court declined to exercise supplemental jurisdiction over the councilwoman's claims alleging wrongful trespass on personal property, theft, and violation of the Maryland Open Meetings Act, because it had dismissed the councilwoman's federal claims. *Grimes v. Miller*, 448 F. Supp. 2d 664 (D. Md. 2006).

Cited in *Baltimore County v. Wesley Chapel Bluemount Ass'n*, 110 Md. App. 585, 678 A.2d 100 (1996); *City of Balt. Dev. Corp. v. Carmel Realty Assocs.*, 395 Md. 299, 910 A.2d 406 (2006); *J.P. Delphay L.P. v. Mayor of Frederick*, 396 Md. 180, 913 A.2d 28 (2006); *Armstrong v. Mayor of Baltimore*, 409 Md. 648, 976 A.2d 349 (2009).

STATE PERSONNEL AND PENSIONS

DIVISION I. STATE PERSONNEL

TITLE 2. STATE EMPLOYMENT GENERALLY

Subtitle 5. Health and Welfare Benefits Program.

Sec.

2-515.1. Enrollment and participation by certain regional library employees.

SUBTITLE 5. HEALTH AND WELFARE BENEFITS PROGRAM

§ 2-515.1. Enrollment and participation by certain regional library employees.

(a) *Scope.*- This section applies to the Southern Maryland Regional Library, the Eastern Shore Regional Library, and the Western Maryland Regional Library.

(b) *In general.*- An employee of a regional library subject to this section may enroll and participate in the health insurance benefit options established under the Program with the approval of the library.

(c) *Duties and obligations of regional libraries.*- A regional library subject to this section shall:

(1) pay to the State the total costs resulting from the participation of its employees in the Program; and

(2) determine the extent to which the regional library will subsidize participation of its employees in the Program.

[2007, chs. 129, 130.]

Editor's note. Section 2, chs. 129 and 130, Acts 2007, provides that the act shall take effect July 1, 2007.

DIVISION II. PENSIONS

Cross references. As to Resolutions of the General Assembly Compensation Commission Determining the Compensation and Allowances of Members of the General Assembly, see notes to Subtitle 3 of Title 2 of the State Government Article.

For present rule of interpretation as to gender, see Article 1, § 7.

Editor's note. The cases appearing in the notes to this Division II of this article were decided under the former statutes in effect prior to the 1994 revision. These earlier cases have been moved to pertinent sections of the revised material where they may be useful in interpreting the current statutes. Internal references have also been updated.

Legislative authority. - For a discussion of the General Assembly's power to enact changes to benefit structure of State retirement systems, see; 61 Op. Att'y Gen. 746 (1976).

Annuity and pension distinguished. - There is a clear distinction between an annuity resulting from employee contributions and a pension. *Mazor v. State*, Dep't of Cor., 30 Md. App. 394, 352 A.2d 918 (1976), aff'd, 279 Md. 355, 369 A.2d 82 (1977).

Nature of pension. - A pension provided by this article does not constitute contract that may not be impaired, but it is a benefit or gratuity provided by State entirely at its expense. *Mazor v. State*, Dep't of Cor., 30 Md. App. 394, 352 A.2d 918 (1976), aff'd, 279 Md. 355, 369 A.2d 82 (1977).

"Employment." - General Assembly used the word "employment" to describe the conventional relationship of a master and servant; it did not intend to include an independent contractor within that term. 73 Op. Att'y Gen. 310 (1988).

Creditable service. - A master cannot acquire creditable service in contributory pension plan after attaining age 70 even though he is still serving. *Cohen v. Goldstein*, 58 Md. App. 699, 474 A.2d 229 (1984), cert. denied, 301 Md. 41, 481 A.2d 801 (1984).

TITLE 22. EMPLOYEES' AND TEACHERS' RETIREMENT SYSTEMS

Subtitle 2. Membership.

PART I. Membership Generally.

Sec.

22-205. Membership in the Teachers' Retirement System - Scope.

SUBTITLE 2. MEMBERSHIP

PART I. MEMBERSHIP GENERALLY

§ 22-205. Membership in the Teachers' Retirement System - Scope.

(a) *Application.*- Except as provided in subsection (b) of this section, §§ 22-206 through 22-208 of this subtitle apply only to:

(1) an employee of a day school in the State under the authority and supervision of a county board of education or the Baltimore City Board of School Commissioners, employed as:

- (i) an attendance officer;
- (ii) a clerk;

- (iii) a helping teacher;
 - (iv) a principal;
 - (v) a superintendent;
 - (vi) a supervisor; or
 - (vii) a teacher;
 - (2) a faculty employee of an educational institution supported by and under the control of the State;
 - (3) a librarian or clerical employee of any library that is established or operates under the Education Article;
 - (4) a professional or clerical employee of a community college that is established or operates under the Education Article; or
 - (5) a staff employee of the University System of Maryland, Morgan State University, or St. Mary's College who is a member of the Teachers' Retirement System as of January 1, 1998.
- (b) *Exceptions.*- Sections 22-206 through 22-208 of this subtitle do not apply to:
- (1) an individual who has elected to participate in an optional retirement program under Title 30 of this article;
 - (2) an individual who is employed under a federal public service employment program;
 - (3) a professional or clerical employee of the Department of Public Libraries of Montgomery County who elected to transfer to the employees' retirement system of Montgomery County; or
 - (4) an employee of the University System of Maryland, Morgan State University, or St. Mary's College who becomes an employee on or after January 1, 1998 in a position as a staff employee of the educational institution that was eligible for membership in the Teachers' Retirement System or Teachers' Pension System under Chapter 6, § 8, paragraphs 1(a) and 2(a) of the Acts of 1994.

[An. Code 1957, art. 73B, §§ 3-101, 3-201, 3-501, 3-502, 3-503, 3-504, 3-505, 3-506; 1994, ch. 6, § 2; 1996, ch. 618, § 2; 1998, ch. 467.]

Legislative intent. - The General Assembly did not say that only certain types of professional community college employees may join the Teachers' Retirement System, or that only those who meet eligibility criteria established by the Board of Trustees may join. Instead, it stated, without qualification, that all professional employees of community colleges are eligible to become members. *Mauzy v. Hornbeck*, 285 Md. 84, 400 A.2d 1091 (1979).

Authority to promulgate definition not delegated. - The General Assembly did not authorize the Board of Trustees or any other agency to promulgate a definition for determining who are community college professional employees. *Mauzy v. Hornbeck*, 285 Md. 84, 400 A.2d 1091 (1979).

No application to community college professional employees. - Section expressly limited to teachers who are employed in a public day school and it has no application to community college professional employees. *Mauzy v. Hornbeck*, 285 Md. 84, 400 A.2d 1091 (1979).

Rule limiting eligibility to Teachers' Retirement System held invalid. - Rule limiting eligibility for admission to the Teachers' Retirement System to professional employees of community

colleges in the teaching field is invalid. *Mauzy v. Hornbeck*, 285 Md. 84, 400 A.2d 1091 (1979).

Meaning of "professional employee." - The General Assembly did not set forth a definition of "professional employee" for purposes of this section, and nothing in this section suggests that the phrase "professional employee" was being used in an unusual or special sense. Consequently, under the settled principles of statutory interpretation, the words must be given their normal, ordinary and generally understood meaning. *Mauzy v. Hornbeck*, 285 Md. 84, 400 A.2d 1091 (1979).

Membership not premised upon source of salary. - The definition of "teacher" does not premise membership upon the source of salary. 63 Op. Att'y Gen. 584 (1978).

Certain categories eligible. - Categories of superintendent, supervisor and principal are individually eligible for membership in the retirement system, irrespective of their management rank within a public school. 62 Op. Att'y Gen. 776 (1977).

Eligibility for membership not tied to source of compensation. - There is nothing in subsection (a) of this section which ties eligibility for membership in the retirement system to the source of the faculty or staff member's compensation. 63 Op. Att'y Gen. 584 (1978).

Obligation of University. - It was the obligation of the University to enroll all persons eligible for participation pursuant to this section. 63 Op. Att'y Gen. 584 (1978).

Certain Maryland State School for the Blind employees not included. - Supervisor (girls) position for the Maryland State School for the Blind would not be included in the retirement system under any interpretation of "teacher". 62 Op. Att'y Gen. 776 (1977).

Employees required by State law to be included in offices of county superintendent. - The definition of "teacher" includes not only those who teach in a public day school, but also those categories of employees required by State law to be included in all offices of county superintendent. 62 Op. Att'y Gen. 776 (1977).

Scope of review. - Function of Court of Appeals, in interpreting and applying the statutory provision prescribing the eligibility of community college employees to join the Teachers' Retirement System, and the duty of the Board of Trustees, in administering that provision, is to ascertain and effectuate the real intention of the General Assembly. *Mauzy v. Hornbeck*, 285 Md. 84, 400 A.2d 1091 (1979).

TITLE 23. EMPLOYEES' AND TEACHERS' PENSION SYSTEMS

Subtitle 2. Membership.

PART I. Membership Generally.

Sec.

23-206. Membership in the Teachers' Pension System - Scope.

SUBTITLE 2. MEMBERSHIP

PART I. MEMBERSHIP GENERALLY

§ 23-206. Membership in the Teachers' Pension System - Scope.

(a) *Application.*- Except as provided in subsection (b) of this section, §§ 23-208 through 23-210 of this subtitle apply only to:

(1) an employee of a day school in the State under the authority and supervision of a county board of education or the Baltimore City Board of School Commissioners, employed as:

- (i) a clerk;
- (ii) a helping teacher;
- (iii) a principal;
- (iv) a superintendent;
- (v) a supervisor; or
- (vi) a teacher;

(2) a faculty employee of an educational institution supported by and under the control of the State;

(3) a librarian or clerical employee of a library that is established or operates under the Education Article;

(4) a professional or clerical employee of a community college that is established or operates under the Education Article;

(5) a staff employee of the University System of Maryland, Morgan State University, or St. Mary's College who is a member of the Teachers' Pension System as of January 1, 1998, or who transfers from the Teachers' Retirement System on or after January 1, 1998;

or

(6) a nonfaculty employee of the Baltimore City Community College who:

(i) is a member of the Teachers' Pension System as of October 1, 2002 and does not transfer to the Employees' Pension System in accordance with § 23-202.1 of this subtitle;

or

(ii) transfers from the Teachers' Retirement System on or after October 1, 2002.

(b) *Exceptions.*- Sections 23-208 and 23-209 of this subtitle do not apply to:

(1) an individual who has elected to participate in an optional retirement program under Title 30 of this article;

(2) an individual who is employed under a federal public service employment program;

(3) a professional or clerical employee of the Department of Public Libraries of Montgomery County who is participating in the Employees' Retirement System of

Montgomery County;

(4) a staff employee of the University System of Maryland, Morgan State University, or St. Mary's College who becomes employed on or after January 1, 1998 in a position as a staff employee of the educational institution that was eligible for membership in the Teachers' Retirement System or Teachers' Pension System under Chapter 6, § 8, paragraphs 1(a) and 2(a) of the Acts of 1994;

(5) an employee who is not a member of a State system and who accepts a position for which the budgeted hours per fiscal year are less than 500 hours in the first fiscal year of employment; or

(6) a nonfaculty employee of the Baltimore City Community College who becomes employed on or after October 1, 2002, or who transfers to the Employees' Pension System in accordance with § 23-202.1 of this subtitle.

[An. Code 1957, art. 73B, §§ 3-506, 5-101, 5-201; 1994, ch. 6, § 2; 1996, ch. 618, § 2; 1998, ch. 467; 1999, ch. 522; 2002, ch. 127; 2004, ch. 25, § 5; ch. 532, § 2.]

Cross references. As to transfer of Baltimore City Community College employees, see § 23-202.1 of this subtitle.

PART II REGULATIONS

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CODE OF REGULATIONS OF THE MARYLAND STATE BOARD OF EDUCATION

Title 13A STATE BOARD OF EDUCATION

Subtitle 05 SPECIAL INSTRUCTIONAL PROGRAMS

Chapter 04 Programs for Library Media Services

Authority: Education Article, §5-206 and Title 23, Annotated Code of Maryland

.01 Public School Library Programs.

A. Each local school system shall establish in each school a unified school library media program for the use of all students which shall include, but not be limited to:

- (1) An organized and centrally managed collection of instructional materials and technologies;
- (2) Instruction emphasizing information literacy skills integrated into all content areas;
- (3) Appropriate materials and technologies to support the instructional programs of the local school systems; and
- (4) Certified school library media personnel and support staff.

B. The school library media program shall be integrated with the local school system's instructional programs by having certified school library media personnel:

- (1) Participate in the development and implementation of all educational programs;
- (2) Instruct students, in cooperation with other teachers, in information literacy skills including reading, research, and critical thinking skills which have been integrated into other areas of the curriculum.

C. Each local school system shall develop and implement a plan for its school library media program which shall include the following goals and subgoals to:

- (1) Provide direct instruction to help students become information literate through the achievement of the following learner outcomes:
 - (a) Locating and using information resources including technologies,
 - (b) Reviewing, evaluating, and selecting materials for an identified information need,
 - (c) Learning and applying reading, research, and critical thinking skills to organize information,
 - (d) Comprehending content in various types of media,
 - (e) Retrieving and managing information,
 - (f) Demonstrating an appreciation of literature and other creative expressions as sources of information and recreation,
 - (g) Creating materials in various formats,
 - (h) Applying ethical behavior to the use of information;
- (2) Support instruction by:

- (a) Collaborating with school and system level staff as well as with other individuals and organizations,
 - (b) Participating in curriculum development implementation and evaluation,
 - (c) Providing resources to support instruction,
 - (d) Providing professional development services;
- (3) Provide services which include but are not limited to:
- (a) Evaluating and selecting instructional materials and technologies in accordance with local board of education policies,
 - (b) Implementing procedures for the acquisition, organization, circulation, and removal of instructional materials and technologies,
 - (c) Providing reference and information assistance for specific requests,
 - (d) Promoting instructional materials, technologies, and services to students, staff, parents, and the community,
 - (e) Providing access to people and information outside the school community;
- (4) Provide personnel who include:
- (a) Certified school library media personnel with technical and clerical assistance at the school building level to organize and operate a school library media program,
 - (b) Central office leadership and technical and clerical assistance to support and coordinate the school library media program;
- (5) Make accessible a comprehensive and organized collection of selected instructional materials and technologies according to policies established by local boards of education;
- (6) Provide an adequate physical facility which is accessible and conducive to learning.
- D. Each local school system shall have school library media program implementation documents which are reviewed and updated on a periodic basis. These documents shall include:
- (1) Selection and removal policies and procedures;
 - (2) Curriculum and instruction documents for teaching information literacy skills including reading, research, and critical thinking skills;
 - (3) Handbooks or manuals of operational procedures.

E. Each local school system superintendent shall certify to the State Superintendent that the elementary and secondary school library media programs meet or are working towards meeting the requirements set forth in these regulations, according to the periodic review schedule established by the State Department of Education.

F. The State Department of Education shall implement a procedure for conducting periodic reviews of local school system school library media programs in order to identify program and professional development needs that exist in library media programs. The Department shall submit a copy of the results of its periodic review to the appropriate local school system superintendent.

.02 Librarians in County Public Libraries.

A. Each librarian employed by a county public library in Maryland shall hold a professional certificate issued by the State Superintendent.

B. There shall be Professional Public Librarian Certification and Public Library Director Certification.

(1) Professional Public Librarian Certification.

(a) An applicant for Public Librarian Certification shall have a master's degree from a library school accredited by the American Library Association.

(b) This certificate shall be valid for 5 years and shall be renewed by the State Superintendent for an additional 5 years if the certificate holder has completed 6 semester hours or their equivalent in an accredited institution or in an in-service program in one of the following areas:

(i) Management and supervision;

(ii) Information technology;

(iii) Reference or technical services; or

(iv) Other subjects that are relevant to the professional assignment of the librarian.

(2) Professional Library Director Certification.

(a) An applicant for Professional Library Director Certification shall have:

(i) A master's degree from a library school accredited by the American Library Association; and

(ii) Five years of experience as a professional librarian with at least 2 years of experience in an administrative or supervisory capacity.

(b) This certificate shall be valid for 5 years and may be renewed by the State Superintendent for an additional 5 years if the certificate holder has completed 6 semester hours or their equivalent in an accredited institution or in an in-service program in the areas of library management or administration, and other subjects that are relevant to the professional assignment of a Professional Library Director.

C. An in-service program that forms the basis for credit under this regulation shall meet the standards for approval promulgated by the Library Development and Services Division of the State Department of Education.

D. Conditional Degree Certificate. The State Superintendent may issue a Conditional Degree Certificate at the request of a county public library if the State Superintendent determines that an applicant's preparation or experience, or both, are adequate to justify issuance of a conditional certificate. A conditional certificate:

(1) Shall be valid for 2 years from the date of its issuance; and

(2) May not be renewed.

E. Certificates shall be issued by the State Superintendent upon a written application supported by official transcripts of the applicant's record and other documentation that may be required by the State Department of Education.

F. An application shall contain payment for processing in accordance with the fee schedule that is established by the State Department of Education.

G. The requirements for certification under these regulations are for the purposes of State certification. A county public library may, as a condition for employment, establish additional requirements.

H. An application for renewal of a certificate under these regulations shall be made in writing to the State Superintendent not later than 90 days before the expiration date of the certificate. If the certificate has expired, a holder of a former certificate shall meet the certification requirements of the State Board that are in effect at the time of the application for the new certificate.

.03 Public Library Associate.

A. Definition. The public library associate provides support services requiring rudimentary knowledge of library service, the library collections, and the policies and regulations governing the library.

B. Job Responsibilities.

- (1) The library associate works under the direction of an experienced professional librarian.
- (2) Examples of appropriate job responsibilities are:
 - (a) Assisting library patrons in locating information through the library;
 - (b) Providing information to the public on library services, policies, and procedures;
 - (c) Collecting, recording, and compiling information and statistics;
 - (d) Assisting in the preparation and presentation of library programs;
 - (e) Operating a small library branch or service outlet;
 - (f) Assisting in the review and selection of library materials;
 - (g) Checking and transcribing bibliographic and cataloging information as required; and
 - (h) Assisting in the development and maintenance of information technology.

C. Education and Training.

- (1) To be appointed to a public library associate position, an applicant shall have:
 - (a) A bachelor's degree from an accredited institution; and
 - (b) Completed a minimum of 90 clock hours of approved in-service training or 9 hours of formal academic course work in library science.
- (2) An appointee with only a bachelor's degree shall have 2 years from the date of appointment to complete the training requirements in §C(1)(b) of this regulation.
- (3) Upon completion of the training requirements in §C(1) and (2) of this regulation, Library Associates shall complete 6 semester hours or their equivalent in an accredited institution or in an in-service program in subjects that are relevant to the assignment of a Library Associate every 5 years.

D. An in-service program that forms the basis for credit under this regulation shall meet the standards for approval promulgated by the Library Development and Services Division of the State Department of Education.

E. Requirements and Responsibilities of Public Library Administrators and Boards of Trustees. Public libraries shall:

- (1) File with the State Department of Education a letter of assurance of compliance with these regulations; and
- (2) Maintain personnel records on each library associate to include:

- (a) Job description,
- (b) Formal education,
- (c) Experience,
- (d) In-service training, and
- (e) Academic courses completed.

F. Requirements and Responsibilities of the Division of Library Development and Services of the State Department of Education. The Division:

- (1) May perform periodic review and evaluation of the library associate personnel records in each public library system and report to the State Superintendent of Schools on compliance with these requirements;
- (2) Shall develop or assist libraries in the development of in-service education and staff development programs appropriate for the training of library associates;
- (3) Shall publish criteria for the approval of in-service training and the awarding of library associate credits; and
- (4) Shall approve in-service training for the awarding of library associate credits.

.04 Library Programs Involving Federal Funds.

The regulations for the acceptance and administration of federal funds for the further development of public library and cooperative library services as provided in Public Law 91-600, as amended, shall be those set forth in the Basic State Plan for the administration on the Library Services and Construction Act.

.05 Special Library Services.

The State Department of Education shall provide library services to the blind and physically disabled. The State Department of Education shall receive and utilize the resources of federal agencies in accordance with policies governing these resources. It shall coordinate library service to the blind and physically disabled with those of public libraries and other educational institutions so as to provide an effective Statewide program. The service is provided by the State Library for the Physically Handicapped administered by the Division of Library Development and Services.

.06 Free Public Library Services.

A. The board of public library trustees for each county, including Washington County and Baltimore City, shall develop and submit to the Division of Library Development and Services, Maryland State Department of Education, a statement of its policies relating to the provision of free library services to the public. Each statement shall state the board's policies with respect to:

(1) Limits to be placed on the amount of free services, such as limits on the number of books or other materials borrowed at one time, or time limits on borrowing;

(2) Online database searches, including a statement of:

(a) Reasonable time limitations on Internet or database searches; and

(b) Charges to users for additional online searches;

(3) Charges for utilities or conveniences available to library users, such as copying machines, printers, fax machines, or other equipment.

B. The Division of Library Development and Services shall report to the State Superintendent and State Board of Education any statements submitted pursuant to this regulation which are not in compliance with State laws and regulations regarding free library services.

C. "Free library services" is defined to include the use of all library materials and services available for reference/information and for circulation to library users regardless of format, including printed materials, media, computer software, Internet, online databases, or other forms of electronic storage of information.

D. A public library may not charge usage fees for circulation or use of any materials, excluding late return and excess use charges authorized in this regulation.

.07 Audits of County Public Libraries.

A. Audit Required. Each board of library trustees for a county public library shall have an audit made of its financial statements for each fiscal year.

B. Qualifications and Approval of Auditor. The auditor shall meet the qualifications in COMAR 13A.02.07.04B. The director of the county public library shall submit to the State Superintendent of Schools for approval, by May 1 of the fiscal year to be audited, the name of the auditor.

C. Audit Standards and Report. The auditor shall conduct the audit in accordance with the standards in COMAR 13A.02.07.04D and the audit reporting package shall include the information in COMAR 13A.02.07.04E.

D. Submission of Report. The director of the county public library shall submit a copy of the audit reporting package to the State Superintendent of Schools and appropriate county governing body by November 1 after the close of the fiscal year, except that a county having a population of more than 500,000 and having a county library agency as provided by Education Article, §23-401(b), Annotated Code of Maryland, shall submit the audit report by January 1 after the close of the fiscal year.

E. Audits of Federal Awards. Each county public library that expends \$500,000 or more in federal awards in any fiscal year shall have an audit made in accordance with COMAR 13A.02.07.05.

F. Additional Provisions. The provisions of COMAR 13A.02.07.06—.10 shall apply to audits conducted under this regulation.

G. Exemptions. This regulation does not apply to county public libraries which:

- (1) Do not receive, account for, control, and supervise the spending of any public funds for the library;
- (2) Do not prepare separate financial statements; and
- (3) Are audited as a part of the county government.

.08 County Library Capital Project Grants Program.

A. In this regulation, the following terms have the meanings indicated.

B. Terms Defined.

- (a) "DLDS" means the Division of Library Development and Services.
- (b) "LLA" means local library agency or county library system.
- (c) "Project completion" means:
 - (i) Construction work has been completed in accordance with the contract documents;
 - (ii) The project architect has issued a certificate of completion;
 - (iii) The contractor has submitted the application for final payment; and
 - (iv) The building has been accepted by the LLA.

C. Responsibilities of DLDS. DLDS shall:

- (1) Develop and administer a grant program for county library capital projects to provide a uniform and objective analysis of proposed capital projects and support projects that address the library needs in the State;
- (2) Evaluate and prioritize grant requests to provide a uniform and objective analysis of proposed capital projects, including the review of each applicant's library facilities master plan;
- (3) Review proposed county library construction grants and issue approvals that are specific to a definite project with a prescribed scope and cost; and
- (4) Use the following criteria to evaluate capital project requests:
 - (a) The public necessity and urgency of a project;
 - (b) The need for additional sources of funding for a project;
 - (c) The estimated cost and timeliness of executing a project;
 - (d) The viability of matching funds for a project;
 - (e) Geographic diversity; and
 - (f) Other factors that may give priority to a project.

D. Library Facilities Master Plan.

- (1) By July 1 of each year, as a condition of receiving State project approval, each LLA shall submit to DLDS or its designee:
 - (a) Countywide library plan, which includes:
 - (i) A mission statement;
 - (ii) A needs statement; and
 - (iii) Multiyear goals and objectives; and
 - (b) Library facilities master plan, which includes:
 - (i) A description of the capital project approved by the applicant's governing body;
 - (ii) An updated and detailed capital improvement program for the following fiscal year; and
 - (iii) A library capital improvement program for the following 5 years.

(2) The annual and subsequent 5-year capital improvement program shall be consistent with the current library facilities master plan of record.

E. Capital Improvement Projects Grants Program.

(1) By July 15 of each year, an LLA may submit up to 3 applications to DLDS to receive grants for capital projects for the next fiscal year.

(2) An application shall include:

(a) A description of the scope and purpose of the project;

(b) A building plan that includes the estimated total cost of the project, including matching funds; and

(c) Any other information required by DLDS.

(3) On or before October 1 of each year, DLDS shall make a recommendation to the State Board of Education regarding LLA capital project grants for the following fiscal year that:

(a) Identifies capital projects for funding approval; and

(b) Recommends a maximum State construction allocation for each project.

(4) On or before November 1 of each year, on approval of the State Board, DLDS shall forward the list of approved LLA capital projects to the Department of Budget and Management.

(5) By December 1 of each year, each local library board shall submit documentation that:

(a) The local government has approved the LLA request for State funds and agreed to provide the required matching funds; and

(b) The requested State funding will be expended within the fiscal year following the fiscal year in which the funds are requested.

(6) Amendments to the State capital improvement program that a local library board considers necessary to submit during the course of the year shall be reviewed and approved by DLDS and the State Board of Education before an amendment may be implemented.

(7) State and Local Cost Share Formula.

(a) The maximum State share shall be no more than 50 percent of the project expenses approved by DLDS pursuant to this regulation and Education Article, §23-502, Annotated Code of Maryland.

(b) Grants under this program may not be for an amount less than \$20,000.

F. Planning and Design of Capital Projects.

(1) Land or buildings for a capital project shall be acquired by the board of library trustees or, in Montgomery County, the Department of Public Library Services.

(2) Architects and Engineers.

(a) The plans, specifications, and related documents for each construction project shall be developed under the supervision and responsibility of a licensed architect or engineer.

(b) The LLA shall select the architect or engineer.

(c) The LLA shall notify DLDS of the architect or engineer selected.

G. Grant Close-Out.

(1) Within 180 days after project completion, the LLA shall submit a close-out summary to DLDS using a form provided by DLDS.

(2) The State Department of Education may conduct financial and procedural compliance audits.

H. Rescinding Funding Approval.

(1) If, within 2 years after funding is made available for a project, no part of the project is under contract, DLDS may determine the project to be abandoned and rescind the funding approval.

(2) When DLDS rescinds funding approval, DLDS shall transfer the allocation to the Statewide Contingency Account for the fiscal year in which the project was approved for funding.

(3) Funds transferred to the Statewide Contingency Account may be used for any project approved in a future LLA capital improvement program.

(4) After a project approval is rescinded, to be considered for reinstatement, the project shall be submitted as a new project request in a succeeding fiscal year's annual LLA capital improvement program.

(5) DLDS may approve a request to extend the allowable time for placing a project under contract if the extension is justified by unusual circumstances.

Administrative History

Effective date: April 3, 1964

Regulation .01 repealed and new Regulation .01 adopted effective July 28, 1986 (13:15 Md. R. 1735)

Regulation .01 amended effective September 12, 1994 (21:18 Md. R. 1511); April 3, 2000 (27:6 Md. R. 643)

Regulation .02 effective September 1, 1954

Regulation .02 repealed and new Regulation .02 adopted effective January 1, 1987 (13:24 Md. R. 2561)

Regulation .02 amended effective November 8, 2004 (31:22 Md. R. 1596)

Regulation .02B amended effective June 30, 2008 (35:13 Md. R. 1181)

Regulation .02C amended effective December 14, 1987 (14:25 Md. R. 2661)

Regulation .03 adopted effective February 26, 1979 (6:4 Md. R. 278)

Regulation .03 amended effective June 7, 1993 (20:11 Md. R. 915); November 8, 2004 (31:22 Md. R. 1596)

Regulation .04 amended effective February 22, 1980 (7:4 Md. R. 350)

Regulation .05 amended effective September 12, 1994 (21:18 Md. R. 1511)

Regulation .06 adopted effective May 30, 1988 (15:11 Md. R. 1331)

Regulation .06 amended effective June 30, 2008 (35:13 Md. R. 1181)

Regulation .06A amended effective September 12, 1994 (21:18 Md. R. 1511)

Regulation .07 adopted effective September 4, 1989 (16:17 Md. R. 1886)

Regulation .07 amended effective October 4, 1999 (26:20 Md. R. 1547); September 25, 2006 (33:19 Md. R. 1561)

Regulation .08 adopted effective August 27, 2007 (34:17 Md. R. 1509)

Annotation: COMAR 13A.05.04.06 cited in Attorney General Opinion No. 87-057 (December 9, 1987)