

**OPEN MEETINGS COMPLIANCE BOARD**  
**Minutes of October 16, 2008 Annual Meeting**

***Attendance / Opening Remarks***

The Open Meetings Compliance Board met on Thursday, October 16, 2008, at 10:00 a.m. in the offices of the Attorney General, 200 Saint Paul Place, Baltimore, Maryland. In attendance were Compliance Board members Elizabeth Nilson, Courtney McKeldin, and Julio Morales; counsel to the Compliance Board, Assistant Attorney General William Varga, as well as Jeffrey Darsie and Kathleen Izdebski, also employees of the Attorney General's Office.

Members of the public in attendance were Charlett Bundy of the Washington Suburban Sanitary Commission; Michele Dinkel of the Maryland Association of Counties; Thomas Marquardt, Executive Editor of *The Capital* and *Gazette* newspapers, representing the Maryland - Delaware - D.C. Press Association; Jack Murphy of the Maryland - Delaware - D.C. Press Association; Thomas Reynolds of the Maryland Municipal League; and Carol Saffran-Brinks of the Howard County Solicitor's Office.

Ms. Nilson called the meeting to order, welcomed those in attendance and invited those present to introduce themselves. Ms. Nilson then asked Mr. Varga to discuss the Draft 16<sup>th</sup> Annual Report of the Open Meetings Compliance Board he had prepared for the Compliance Board's review.

***Activities of the Board***

Mr. Varga summarized the activity of the Compliance Board during the past year. Mr. Varga adverted to the tables showing complaint activity during the period July 1, 2007 to June 30, 2008 and noted that these figures represented a decrease from the prior year. He cautioned, however, that complaint statistics are not necessarily reliable indicators of compliance or noncompliance and that frequent complaints against a particular public body may reflect an active complainant more than an actual problem with the public body. In any event, given the nature of the complaints and the limited amount of litigation under the Act, in his view, compliance with the Open Meetings Act had been "fairly good." When the Compliance Board has found violations, these appear to have been more "technical in nature" rather than efforts to circumvent the requirements of the Act.

Ms. Nilson called for comments; there being none, she then asked Mr. Varga to discuss legislative matters.

*Proposed Legislation*

- *House Bill 349 (2008)*

Mr. Varga discussed House Bill 349, legislation introduced during the 2008 session which, as introduced, would have precluded a public body from conducting a vote during a meeting closed pursuant to the Act. Mr. Varga first outlined the interpretive problem created by the original draft of the bill, as addressed in a letter from the Compliance Board to Chairman Hammen, House Health & Government Operations Committee, February 20, 2008. Mr. Varga then explained that the original bill had been narrowed in an effort to attract more legislative support, and in its amended form, the bill would apply only to final votes conducted in meetings closed pursuant to §§10-508(a)(3) (acquisition of property) and (a)(14) (competitive procurements) of the Act.

Mr. Varga summarized his concerns as essentially practical in nature, *i.e.* the difficulty of a public body determining whether a particular vote might constitute the final vote under particular circumstances.

Mr. Marquardt expressed the view that all votes should be discussed and conducted in public “whether impractical or not.” Of particular concern, he observed, is that currently the Act contains no requirement that closed-session minutes must disclose how each member of the public body votes on a matter that is decided during the closed session. Mr. Murphy suggested that, rather than re-open the meeting, perhaps the legislation might require the minutes to record how each member votes on such measures, as the Act already requires with respect to the vote to close the meeting. Ms. Bundy supported this idea in principle, but questioned whether the privacy or confidentiality of the surrounding discussion could be adequately protected.

Mr. Varga noted that there is a wide diversity of meeting and voting procedures adhered to by the various entities subject to the Act and that voting on some measures is done informally or by consensus. Ms. Saffran-Brinks also questioned whether a blanket rule is appropriate, given the differing procedures followed by different bodies. Ms. Bundy stated that so long as the discussion remains protected, members of public bodies should be accountable for how they vote during a closed session.

Mr. Reynolds suggested that any proposed rule should be examined and considered exception by exception, rather than as a single rule applicable to all situations. Mr. Reynolds also expressed concerns about protection of the negotiation process.

Ms. Nilson stated that, in her view, the Compliance Board should consider the suggestions made as to recording votes by name and requiring they be included in closed meeting minutes. Ms. McKeldin and Mr. Morales also spoke in support of recording votes by name.

Mr. Reynolds again suggested that a broad rule may not be appropriate in all circumstances, posing a hypothetical case, such as a sensitive personnel matter, where members might not want their votes publicly revealed. In a vote to remove an official, for example, a recorded vote which failed to remove the official might harm the ongoing relationship between the official and the public body thereafter.

Mr. Marquardt argued that the rule was most needed where such controversial decisions were made or votes taken. Mr. Morales agreed that recording the “tough votes” should be required, that a willingness to cast such votes was necessary for those who would serve on public bodies, and that only those willing to be held accountable for their decisions should serve in positions where they are expected to make them.

Mr. Marquardt recommended that a proposed bill to mandate disclosure of roll call votes should address all exceptions listed under §10-508 of the Act, rather than only the two indicated in the revised legislation. Mr. Varga cautioned that including the requirement for all exceptions would be more controversial. It was then suggested that the Compliance Board make an immediate recommendation supporting disclosure of final voting in publicly available minutes as to the (a)(3) and (a)(14) exceptions and propose further study as to whether the requirement should be extended to any of the other exceptions under §10-508(a).

There was consensus that the Compliance Board report to the General Assembly on the “final votes” measure consistent with the foregoing discussion.

- *Citizen Suggestions*

The Compliance Board next considered several legislative proposals submitted to the Compliance Board by Ms. Michelle Fluss. First, she urged consideration of legislation concerning advisory committees, patterned after select provisions of the Federal Advisory Committee Act (“FACA”), renewing a proposal which she had made the previous year. A related proposal would require that certain information concerning an advisory committee be posted on a website. Second, she proposed that public bodies that provide notice of open meetings via the Internet be required to: (1) include in the notice the date it was first posted, and (2) archive meeting notices on the agency website for the 12-month period the Act requires that such notices be kept.

Ms. Nilson called for comments as to the first proposal. No comments were made in support, it being generally agreed the proposal was beyond the mandate of the Compliance Board and not directly relevant to its work. The Compliance Board therefore declined to take a position regarding this proposal.

Discussion was then had regarding the second proposal, for which Mr. Varga and others expressed support as to the notice dating requirement. It was generally agreed that including the date of first posting of a notice would cause no additional burden to public bodies while enabling citizens to see whether reasonable advance notice had been provided as required by the Act. Mr. Varga observed that, with the exception of web notices and bulletin board postings, the date of notice could generally be discerned from the date of the relevant news report, paid announcement, or *Maryland Register* notice. After some consideration of alternatives, it was decided that §10-506(b) of the Act - relating to the requirements for meeting notices - should be amended to require that a posting date be included on meeting notices when notice is given using one of the methods identified in §10-506(c)(3). All members of the Compliance Board supported this approach.

With respect to the other part of the proposal, which would mandate keeping a one-year Internet archive of meeting notices which could be accessed directly from the website, it was stated that such a requirement might be burdensome to some public bodies and that the requirement was unnecessary in any event, so long as the public body maintained a paper record of the notice for a full year as required under current law. No one present at the meeting expressed support for this aspect of the proposal and the Compliance Board declined to take a position on it.

- *Technical Amendment*

Mr. Varga then discussed his proposal to request that the Department of Legislative Services include a non-substantive revision to the definition of “public body,” §10-502(h), in its annual corrective bill. The proposed technical revision would replace the words “county charter” with either “county or municipal charter” or “local charter,” to restore the original meaning (“local charter”) which existed prior to the enactment of the State Government Article in 1984. The Compliance Board requested staff to ask the Department of Legislative Services to consider this suggestion.

### *Adjournment*

The Chair thanked those in attendance and adjourned the meeting at 11:00 am.