

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember Muriel Bowser introduced the following bill, which was referred to the Committee on \_\_\_\_\_.

To amend the District of Columbia Administrative Procedures Act to require that meetings of government bodies be open to the public, and to establish exemptions, notice requirements, meeting procedures, recording requirements, enforcement mechanisms for that purpose, and training and certification for government employees; and to amend the Advisory Neighborhood Councils Act of 1975 to include additional notice requirements.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Open Government is Good Government Act of 2010".

Sec. 2. The District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1203; D.C. Code § 2-501 *et seq.*), is amended by adding a new section 313 to read as follows:

"Sec. 313. Open Meetings Law.

"(a) Statement of policy.

"(1) The public policy of the District of Columbia is that all persons are entitled to full and complete information regarding the affairs of government and the actions of those who

1 represent them. Formation of public policy and conduct of public business shall not occur in  
2 secret.

3 “(2) Members of the public have a right to be present at all meetings of public  
4 bodies that advise or determine how the public's business will be carried out, and to witness all  
5 phases of policy formulation and decision-making, including information-gathering, discussion,  
6 deliberation, and resolution.

7 “(3) Exceptions in this section are intended to permit closure of meetings or  
8 portions thereof only when explicitly authorized by this section.

9 “(b) Rules of construction.

10 In keeping with the foregoing statement of policy, this section shall be construed broadly  
11 to maximize public access to meetings. Exceptions shall be construed narrowly and shall permit  
12 closure of meetings only as authorized by this section.

13 “(c) Definitions.

14 For purposes of this section, the term:

15 (1) “Meeting” means any gathering of a quorum of the members of a public body,  
16 including hearings and roundtables, whether formal or informal, regular, special or emergency, at  
17 which the members consider, conduct, or advise on public business, including gathering  
18 information, taking testimony, discussing, deliberating, recommending and voting, regardless  
19 whether held in person, by telephone, electronically or by other means of communication. The  
20 term “meeting” shall not include a chance or social unless it is held to evade the letter or spirit of  
21 this section.

22 (2) “Public body” means any council, task force, board, or commission of the  
23 District government established pursuant to statute, regulation or order, including any committee,

1 subcommittee, ad hoc committee or advisory body thereof, the Council, the District of Columbia  
2 State Board of Education, the District of Columbia Public Charter School Board; the District of  
3 Columbia Water and Sewer Authority, the Washington Convention and Sports Authority, and  
4 any other entity that is created by and exercises authority delegated by the District of Columbia  
5 government. The term “public body” shall not include the District of Columbia courts,  
6 governing bodies of individual public charter schools, the Mayor’s cabinet, and the professional  
7 or administrative staff of public bodies when they meet outside the presence of a quorum of  
8 those bodies.

9 “(d) Open Meetings.

10 “(1) Except as provided in paragraph (2) of this subsection, a meeting shall be  
11 open to the public.

12 “(2) A meeting, or portion of a meeting, may be closed for the following reasons:

13 “(A) A statute or court order requires that a particular matter or proceeding  
14 not be public;

15 “(B) To establish or to instruct the public body’s staff or negotiating  
16 agents concerning the position to be taken in negotiating the price and other material terms of a  
17 contract or proposed contract for the acquisition or sale of real property by purchase, option,  
18 exchange, or lease, or the amount of compensation and other material terms of an employment  
19 contract; provided, a recording, transcript or minutes (“record”) of the closed session is made  
20 public pursuant to section 6(d) of this section if the contract is executed, information from the  
21 closed session released through a record may be redacted to prevent proprietary commercial  
22 information from being released to the public;

1                   “(C) To establish or instruct the public body’s staff or negotiating agents  
2 concerning the position to be taken in negotiating incentives relating to the location or expansion  
3 of industries or other businesses in the District of Columbia, including agreement on a tentative  
4 list of economic development incentives that may be offered by the public body in negotiations,  
5 provided that a recording, transcript of minutes of the closed session is made public after the  
6 matter is concluded and a business deal has been reached;

7                   “(D) To consult with an attorney in order to preserve the attorney-client  
8 privilege between an attorney and a public body, and to approve settlement agreements;  
9 provided, that upon request, the public body may decide to waive the privilege, in whole or in  
10 part. This decision shall be made within 30 working days of that request. Nothing herein shall be  
11 construed to permit a public body to close a meeting that would otherwise be open merely  
12 because the attorney for the public body is a participant;

13                   “(E) Planning, discussing, or conducting specific collective bargaining  
14 negotiations;

15                   “(F) Preparation, administration, or grading of scholastic, licensing or  
16 qualifying examinations;

17                   “(G) To prevent premature disclosure of an honorary degree, scholarship,  
18 prize or similar award.

19                   “(H) To discuss and take action regarding specific methods and  
20 procedures to protect the public from existing or potential terrorist activity that threatens the  
21 public security and to receive briefings by staff members, legal counsel, law enforcement or  
22 emergency service officials concerning these methods and procedures; provided, that disclosure

1 would endanger the public and a record of the closed session is made public if and when the  
2 public would not be endangered by that disclosure;

3                   “(I) To decide the discipline, suspension, or expulsion of a student in any  
4 public school or public college or university, unless the student requests an open meeting;

5                   “(J) Discussion of disciplinary matters by the District of Columbia Board  
6 of Medicine, unless the licensee requests an open meeting;

7                   “(K) Discussion of the appointment, employment, assignment, promotion,  
8 performance evaluation, compensation, discipline, demotion, removal, or resignation of  
9 government appointees, employees, or officials, unless the person requests an open meeting;

10                   “(L) Discussion of any proprietary or confidential information;

11                   “(M) Training and development of members of a public body and staff;  
12 provided, that prior to the training session, specific details regarding the nature of the training,  
13 topics to be covered, and exercises to be conducted are made available to the public;

14                   “(N) Meetings held solely for the purpose of deliberating to make a  
15 decision in an adjudication action or proceeding by a public body exercising quasi-judicial  
16 functions; and

17                   “(O) To plan, discuss, or hear reports concerning ongoing or planned  
18 investigations of alleged criminal or civil misconduct or violations of federal or District law,  
19 where disclosure to the public would harm the investigations.

20                   “(3) A public body that meets in closed session may not discuss or consider any  
21 matter other than those matters listed under paragraph (2) of this subsection.

22                   “(4) No resolution, rule, act, regulation, or other official action shall be effective  
23 unless taken, made, or enacted at a meeting in compliance with this section.

1                   “(5) A meeting may not be closed for the purpose of defeating the letter or the  
2 intent of this section.

3                   “(6) A public body shall not keep the number of attendees below a quorum in  
4 order to avoid the requirements of this section.

5                   “(e) Notice of meetings.

6                   “(1) Before meetings in open or closed session, a public body shall provide  
7 advance public notice as follows:

8                                 “(A) Notice shall be provided when meetings are scheduled and promptly  
9 provided when that schedule is changed. A public body shall set an annual schedule of its  
10 meetings and provide notice of the schedule at the beginning of and throughout the year, if  
11 feasible. If a public body does not set an annual schedule, it shall provide notice at the time that  
12 meetings are scheduled. Maximum advance notice to the public shall be provided to the extent  
13 feasible. Except for emergency meetings, a public body shall provide at least 5 business days  
14 prior to a meeting.

15                                 “(B) Notice shall be provided by:

16   (i) Publication in the D.C. Register;

17   (ii) Posting in the office of the public body at a prominent location  
18 that is readily accessible to the public;

19   (iii) Posting on the home page of the public body’s website, if any;

20 and

21   (iv) Sending the notice to the Mayor, or his designee, for public  
22 inspection at a central location that is readily accessible to the public and for posting in electronic  
23 form on a single government website; and

1                   “(C) When a public body finds it necessary to call an emergency meeting  
2 to address an urgent matter, notice shall be provided at the same time notice is provided to  
3 members and may be provided pursuant to any method in paragraph (1)(B) of this subsection,  
4 except sub-subparagraph (i).

5                   “(D) Each notice shall include the date, time, location, and the agenda to  
6 be covered at the meeting, the matters to be discussed, and a statement of any intent to close the  
7 meeting, the matters to be discussed, and a statement of any intent to close the meeting or any  
8 portion of the meeting, including citations to the reason for closure under subsection (d)(2) of  
9 this section.

10                  “(f) Meeting procedures; emergency meetings.

11                  “(1) A meeting may be held by video conferencing, telephone conferencing or  
12 other electronic means, provided that:

13                         “(A) Reasonable arrangements are made to accommodate the public's right  
14 to attend the meeting;

15                         “(B) At least one member of the public body is present at each site of the  
16 meeting;

17                         “(C) All votes are taken by roll call;

18                         “(D) No more than one-half of the meetings in a calendar year are  
19 held by electronic means;

20                  “(2) All provisions of this section shall apply to electronic meetings, and those  
21 meetings shall not be held to circumvent the letter or intent of this section

22                  “(3) Email exchanges between members of a public body do not constitute an  
23 electronic meeting.

1           “(4) This section does not authorize an electronic meeting where official action of  
2 any kind may be taken within the meaning of section 742 of the District of Columbia Home Rule  
3 Act (87 Stat. 813, approved December 24, 1973, D.C. Official Code § 1-207.42) unless  
4 authorization is explicitly granted by statute for that public body.

5           “(5)(A) when an emergency meeting is convened, the presiding officer shall open  
6 the meeting with a statement explaining the subject of the meeting, why the matter is urgent, and  
7 how public notice was provided.

8           “(B) The recording, transcript, or minutes of an emergency meeting shall be made  
9 available to the public no later than the end of the next business day.

10           “(C)(i) Before a meeting or portion of a meeting may be closed, the public body  
11 shall meet in public session at which a majority of the members of the public body  
12 present vote in favor of closure.

13           “(ii) The presiding officer shall make a statement providing the reason for  
14 closure, including citations from subsection (d)(2) of this section, the subjects to be discussed,  
15 and the harm that will occur if the meeting is open. A copy of the roll call vote and the statement  
16 shall be provided in writing and made available to the public.

17           “(iii) At the conclusion of the closed meeting, the public body shall  
18 reconvene in public session and to the extent consistent with the applicable reason for closure,  
19 summarize the matters discussed or considered at the closed session; and, if appropriate, take  
20 official action.

21           “(g) Record of meetings.

22           “(1) All meetings of public bodies, whether open or closed, shall be recorded on



1 audio tape, videotape, or by other electronic means; provided, that if a recording is not feasible,  
2 detailed minutes of the meeting shall be kept.

3 “(2) Where a meeting is open to the public:

4 “(A) A copy of an audio tape, videotape or other recording of the meeting  
5 shall be available for public inspection during normal business hours of the public body as soon  
6 as possible, but no later than 3 business days after the meeting; or

7 “(B) A copy of the transcript or minutes of the meeting shall be available  
8 for public inspection as soon as possible, but no later than 15 days after the meeting.

9 “(C) Copies of the record of an open meeting shall be available to the  
10 public upon request at a reasonable cost.

11 “(h) Enforcement.

12 “(1) Any person may bring a lawsuit in the Superior Court for the District of  
13 Columbia for injunctive or declaratory relief for any violation of this section before or after the  
14 meeting in question takes place. The Court shall expedite the action on request of the party  
15 bringing the lawsuit.

16 “(2) In any lawsuit filed under this section, the burden is on the public body to  
17 sustain its action or proposed action. The court shall determine the matter de novo and may  
18 examine the record of a closed meeting to determine whether this section has been violated.

19 “(3) If the court finds that a public body plans to hold a closed meeting or  
20 portion of a meeting in violation of subsection (d) of this section, the court shall:

21 (A) Enjoin the public body from holding the meeting or portion of the  
22 meeting, and shall order that the meeting be open to the public;

23 (B) Order that future meetings of the same kind be open to the public;

1 (C) Order that the record of a meeting be made public forthwith;

2 “(4) If the court finds that a resolution, rule, act, regulation or other official action  
3 was taken, made or enacted in violation of subsection (d)(4) of this section, the court shall  
4 declare that action null and void, and may grant such other relief as necessary and appropriate;

5 “(5) If the court finds that there has been a violation of subsections (e) or (f) of  
6 this section, the court shall order an appropriate remedy, including but not limited to requiring  
7 additional forms of notice, postponing a meeting, or declaring action taken at a meeting to be  
8 null and void.

9 “(6) If the court finds that one or more members of a public body knowingly and  
10 willfully participated in one or more closed meetings of portion(s) of meetings(s) in violation of  
11 the provisions of this section, the court may impose a civil fine of not more than \$100 on each  
12 member or members for each violation.

13 “(7) The court may grant such additional relief as it finds necessary to serve the  
14 purposes of this section.

15 “(8) A person who brings a lawsuit under this subsection and prevails, in whole or  
16 in part, may be awarded reasonable attorney fees and other costs of litigation.

17 “(9) Except as otherwise provided in this section, all employees of the District  
18 government shall be required to comply with the provisions of this section. The Mayor shall  
19 amend the regulations under the District of Columbia Merit Personnel Act, approved March 3,  
20 1979 (D.C. Law 2-139, D.C. Official Code § 1-601.01 *et al.*) to include this requirement.

21 “(i) Training and Certification.

22 “(1) Within 180 days of the enactment of this act, the Secretary of the District of  
23 Columbia (“Secretary”) will produce a training manual explaining the provisions and

1 requirements of the Open Government is Good Government Act for employees and office-  
2 holders of the District of Columbia. Upon completion, a copy of this manual will be given to all  
3 employees of the District of Columbia, with a 1 page certification for the employee to sign and  
4 return to the Secretary. The secretary will provide the manual and certification upon  
5 employment, election, or appointment of all new District employees and office-holders within 30  
6 days of their employment, election, or appointment.

7           “(2) For all District employees and office-holders employed on or before the  
8 enactment date of this act, the employee shall sign a certification that he or she has read the  
9 manual, and understands and will abide by the open meetings law. The employee must sign this  
10 certification and return it to the Secretary’s office within 30 days of receiving it.

11           “(3) For all District employees and office-holders hired, elected, or appointed  
12 after the effective date of this act, the training manual and certification will be provided by the  
13 Secretary within 30 days of the employment, election, or appointment. The employee must sign  
14 this certification and return it to the Secretary’s office within 30 days of receiving it.”

15           Sec. 3. Section 14 of the Advisory Neighborhood Advisory Councils Act of 1975,  
16 effective March 26, 1976 (D.C. Law 1-58; D.C. Official Code 1-309.11). is amended as follows:

17           “(a) Subsection (d)(1)(D) is amended by striking the phrase “special committees;” and  
18 inserting the phrase “special committees, including provisions for giving public notice of all  
19 committee meetings;” in its place.

20           “(b) Subsection (g) is amended by striking the phrase “Each Commission shall be  
21 subject” and inserting the phrase “Each commission, including each committee of a Commission,  
22 shall be subject” in its place.

23           Sec. 4. Fiscal Impact Statement.

1           The Council adopts the fiscal impact statement provided by the Chief Financial Officer as  
2 the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule  
3 Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

4           Sec. 5. Effective Date.

5           This act shall take effect following approval by the Mayor (or in the event of veto by the  
6 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as  
7 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December  
8 24, 1973 (87 Stat. 813; D.C. Official Code § 1- 206.02(c)(1)), and publication in the District of  
9 Columbia Register.