

HB0755/976783/1

BY: Health and Government Operations Committee

AMENDMENTS TO HOUSE BILL 755

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “and A. Washington” and substitute “A. Washington, Hammen, Angel, Bromwell, Hayes, Hill, Kipke, Krebs, McDonough, McMillan, Miele, Morgan, Pendergrass, Rose, Reznik, Saab, Sample-Hughes, West, and K. Young”; strike beginning with “altering” in line 4 down through “programs;” in line 5; in line 6, after “Board” insert “and Office of the Public Access Ombudsman”; in the same line, after “Governor” insert “and the Attorney General”; in line 7, strike “the Governor’s Office Web site” and substitute “their Web sites”; in the same line, after “to” insert “certain”; strike beginning with “for” in line 7 down through “Board” in line 8; in line 8, after “applicants;” insert “requiring the Governor to solicit certain recommendations from certain individuals;”; strike beginning with “authorizing” in line 9 down through “site;” in line 10; in line 10, after “Senate,” insert “and the Attorney General”; in line 11, strike “appoint the members of the Board” and substitute “make certain appointments”; in line 14, after “staff” insert “and office space”; in line 15, after the first “Board” insert “and the Ombudsman”; in the same line, after “Board;” insert “requiring the Board to report on certain matters to the Governor and the General Assembly on or before a certain date;”; in line 17, strike “and” and substitute a comma; in the same line, after “complainant” insert “, and filed within a certain time period”; in line 18, strike “and filed within a certain time period”; strike beginning with “requiring” in line 20 down through “record;” in line 21; in line 22, after “conference;” insert “requiring the Board to hold a certain conference in a certain location under certain circumstances; authorizing the Board to allow certain testimony by teleconference or electronic mail;”; strike beginning with “requiring” in line 23 down through “circumstances;” in line 24; in line 27, after “review;” insert “authorizing a complainant or custodian to appeal a decision of the Board in accordance with certain provisions of law; requiring that a decision of the Board is stayed for a certain period of time under certain circumstances; providing for the staffing of the Office of the Public Access”

(Over)

Ombudsman; providing for the qualifications, term, and salary of the Ombudsman; requiring the Ombudsman to be a full-time State employee; establishing the powers and the duties of the Ombudsman;”.

On pages 1 and 2, strike beginning with “requiring” in line 29 on page 1 down through “custodian;” in line 1 on page 2 and substitute “requiring a certain custodian to provide certain written information under certain circumstances;”.”

On page 2, in line 2, strike “comply” and substitute “produce a public record in accordance”; in line 3, after “dispute” insert “unless the custodian complies with a certain provision of law and is working with a certain applicant in good faith”; in line 8, strike “denying or”; strike beginning with “authorizing” in line 10 down through “circumstances;” in line 16; in line 16, strike “provide certain proof” and substitute “demonstrate”; in line 17, strike “Board” and substitute “Ombudsman certain applicability or harm”; in the same line, after “records” insert “or the application of a certain exemption; authorizing a complainant or custodian to appeal a certain decision to a certain circuit court”; in line 18, strike “certain defendants are” and substitute “a certain defendant is”; in line 19, strike “repealing” and substitute “altering”; in line 21, after “Board;” insert “requiring the Attorney General, in consultation with certain persons, to report on certain matters to the Governor and the General Assembly on or before a certain date;”; strike in their entirety lines 24 through 28, inclusive; in line 31, strike “4-201;”; in the same line, strike “4-343,” and substitute “4-301, and”; in line 38, after “Board” insert “and Section 4-1B-01 through 4-1B-04 to be under the new subtitle “Subtitle 1B. Public Access Ombudsman””; and strike beginning with “providing” in line 21 down through “Act;” in line 22.

AMENDMENT NO. 2

On pages 3 through 5, strike in their entirety the lines beginning with line 5 on page 3 through line 5 on page 5, inclusive.

AMENDMENT NO. 3

On page 7, in line 20, strike “THREE” and substitute “FIVE”; strike in their entirety lines 21 and 22; in line 23, strike “(3) AT LEAST ONE OF THE MEMBERS” and substitute:

“(2) (I) ONE MEMBER”;

in line 24, after “REPRESENTATIVE” insert “:

1.”;

in line 25, strike the period and substitute “:

2. WHO WORKS ON ISSUES RELATED TO TRANSPARENCY OR OPEN GOVERNMENT; AND

3. WHO IS NOMINATED BY REPRESENTATIVES OF THE OPEN GOVERNMENT AND NEWS MEDIA COMMUNITIES.

(II) ONE MEMBER OF THE BOARD SHALL:

1. HAVE KNOWLEDGE OF THE PROVISIONS OF THIS TITLE;

2. HAVE SERVED AS AN OFFICIAL CUSTODIAN IN THE STATE AS DEFINED IN § 4-101(D) OF THIS TITLE; AND

3. BE NOMINATED BY THE MARYLAND ASSOCIATION OF COUNTIES AND THE MARYLAND MUNICIPAL LEAGUE.

(III) 1. THREE MEMBERS OF THE BOARD SHALL BE PRIVATE CITIZENS OF THE STATE.

2. A PRIVATE CITIZEN MEMBER OF THE BOARD MAY NOT BE:

A. A CUSTODIAN OF A PUBLIC RECORD;

B. A MEMBER OF THE NEWS MEDIA; OR

C. A STAFF MEMBER OR SPOKESPERSON FOR AN ORGANIZATION THAT REPRESENTS THE INTERESTS OF CUSTODIANS OR APPLICANTS FOR PUBLIC RECORDS.

(3) AT LEAST ONE MEMBER OF THE BOARD SHALL BE AN ATTORNEY ADMITTED TO THE MARYLAND BAR.”.

On page 8, in lines 1 and 2, strike “GOVERNOR’S OFFICE”; in line 2, after “SITE” insert “OF THE OFFICE OF THE GOVERNOR”; after line 9, insert:

“(III) THE GOVERNOR SHALL SOLICIT RECOMMENDATIONS FOR POSITIONS ON THE BOARD FROM REPRESENTATIVES OF THE CUSTODIAN, NEWS MEDIA, AND NONPROFIT COMMUNITIES.”;

in lines 10 and 16, strike “(III)” and “(IV)”, respectively, and substitute “(IV)” and “(V)”, respectively; in line 14, strike “GOVERNOR’S OFFICE”; strike beginning with “AND” in line 14 down through “SITE” in line 15 and substitute “OF THE OFFICE OF THE GOVERNOR”; in line 16, after “SHALL” insert “:

1.”;

in line 17, after “**BOARD**” insert “;**AND**”

2. ENSURE THE NEUTRALITY OF THE BOARD.

AMENDMENT NO. 4

On page 9, in line 13, after “**STAFF**” insert “**AND OFFICE SPACE**”; in line 18, after “**COMPLAINTS**” insert “**FILED UNDER § 4-1A-05 OF THIS SUBTITLE**”; in the same line, strike “**PERSON**” and substitute “**APPLICANT OR THE APPLICANT’S DESIGNATED REPRESENTATIVE**”; in the same line, after “**A**” insert “**CUSTODIAN CHARGED AN UNREASONABLE FEE UNDER § 4-206 OF THIS TITLE;**”; and strike in their entirety lines 19 through 25, inclusive.

On page 10, strike beginning with “**ORDER**” in line 1 down through “**(II)**” in line 5; in line 6, after “**TITLE,**” insert “**ORDER THE CUSTODIAN TO**”; in the same line, strike “**OF MORE THAN \$250**”; in line 8, strike “**DIFFERENCE; OR**” and substitute “**DIFFERENCE.**”; strike in their entirety lines 9 and 10; strike in its entirety line 12; in line 13, strike “**(2)**” and substitute “**(1)**”; in line 15, strike “**(3)**” and substitute “**(2)**”; and strike beginning with “**AND**” in line 24 down through “**DENIED**” in line 25.

On page 11, in line 1, strike “**PERSON**” and substitute “**APPLICANT OR THE APPLICANT’S DESIGNATED REPRESENTATIVE**”; in line 2, after “**BOARD**” insert “**IF:**”

(1) A CUSTODIAN CHARGED A FEE UNDER § 4-206 OF THIS TITLE OF MORE THAN \$350; AND

(2) THE COMPLAINANT ALLEGES IN THE COMPLAINT THAT THE FEE IS UNREASONABLE.;

and strike beginning with “ALLEGING” in line 2 down through “TITLE.” in line 9.

On page 12, in line 2, after “COMPLAINT” insert “**THE BASIS FOR THE FEE THAT WAS CHARGED.**”; and strike beginning with the colon in line 2 down through “SUBSECTION.” in line 16.

On pages 13 and 14, strike in their entirety the lines beginning with line 17 on page 13 through line 5 on page 14, inclusive.

AMENDMENT NO. 5

On page 12, in line 27, after “(1)” insert “**(I)**”; in the same line, strike “IF” and substitute “**SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, IF**”; and after line 30, insert:

“(II) THE BOARD SHALL HOLD THE INFORMAL CONFERENCE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IN A LOCATION THAT IS AS CONVENIENT AS PRACTICABLE TO THE COMPLAINANT AND THE CUSTODIAN.

(2) WHEN CONDUCTING A CONFERENCE THAT IS SCHEDULED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE BOARD MAY ALLOW THE PARTIES TO TESTIFY BY TELECONFERENCE OR SUBMIT WRITTEN TESTIMONY BY ELECTRONIC MAIL.

On page 13, in lines 1 and 4, strike “(2)” and “(3)”, respectively, and substitute “(3)” and “(4)”, respectively.

AMENDMENT NO. 6

On page 14, in line 10, strike “ATTORNEY GENERAL’S”; in line 11, after “SITE” insert “**OF THE OFFICE OF THE ATTORNEY GENERAL**”; in line 19, before “A” insert “**(A)**”; and after line 20, insert:

“(B) (1) A COMPLAINANT OR CUSTODIAN MAY APPEAL THE DECISION ISSUED BY THE BOARD UNDER THIS SUBTITLE IN ACCORDANCE WITH § 4-362 OF THIS TITLE.

“(2) AN APPEAL UNDER THIS SUBSECTION AUTOMATICALLY STAYS THE DECISION OF THE BOARD PENDING THE CIRCUIT COURT’S DECISION OR NO MORE THAN 30 DAYS AFTER THE DATE ON WHICH THE DEFENDANT SERVES AN ANSWER OR OTHERWISE PLEADS TO THE COMPLAINT, WHICHEVER IS SOONER.”.

AMENDMENT NO. 7

On page 14, before line 21, insert:

“SUBTITLE 1B. PUBLIC ACCESS OMBUDSMAN.

4-1B-01.

IN THIS SUBTITLE, “OMBUDSMAN” MEANS THE PUBLIC ACCESS OMBUDSMAN.

4-1B-02.

(A) THERE IS AN OFFICE OF THE PUBLIC ACCESS OMBUDSMAN.

(B) THE OFFICE OF THE ATTORNEY GENERAL SHALL PROVIDE OFFICE SPACE AND STAFF FOR THE OMBUDSMAN, WITH APPROPRIATE STEPS TAKEN TO PROTECT THE AUTONOMY AND INDEPENDENCE OF THE OMBUDSMAN.

4-1B-03.

(A) SUBJECT TO SUBSECTIONS (B) AND (C) OF THIS SECTION, THE ATTORNEY GENERAL SHALL APPOINT THE OMBUDSMAN.

(B) THE OMBUDSMAN SHALL HAVE BEEN ADMITTED TO PRACTICE LAW IN THE STATE.

(C) (1) THE OFFICE OF THE ATTORNEY GENERAL SHALL PUBLISH, ON ITS WEB SITE, NOTICE OF THE ATTORNEY GENERAL'S INTENT TO CONSIDER APPLICANTS FOR THE OMBUDSMAN POSITION.

(2) THE NOTICE SHALL INCLUDE:

(I) APPLICATION PROCEDURES;

(II) CRITERIA FOR EVALUATING AN APPLICANT'S QUALIFICATIONS; AND

(III) PROCEDURES FOR RESOLVING ANY CONFLICTS OF INTEREST.

(3) (I) AN INDIVIDUAL MAY SUBMIT TO THE ATTORNEY GENERAL AN APPLICATION FOR THE OMBUDSMAN POSITION AS PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION.

(II) THE OFFICE OF THE ATTORNEY GENERAL SHALL POST ON ITS WEB SITE THE NAMES AND QUALIFICATIONS OF APPLICANTS.

(D) (1) THE TERM OF THE OMBUDSMAN IS 4 YEARS.

(2) AT THE END OF A TERM, THE OMBUDSMAN CONTINUES TO SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(3) AN OMBUDSMAN WHO IS APPOINTED AFTER A TERM BEGINS SERVES FOR THE REMAINDER OF THE TERM UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(E) THE OMBUDSMAN SHALL BE A FULL-TIME STATE EMPLOYEE.

(F) THE OMBUDSMAN IS ENTITLED TO AN ANNUAL SALARY AS PROVIDED FOR IN THE STATE BUDGET.

4-1B-04.

(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE OMBUDSMAN SHALL MAKE REASONABLE ATTEMPTS TO RESOLVE DISPUTES BETWEEN APPLICANTS AND CUSTODIANS RELATING TO REQUESTS FOR PUBLIC RECORDS UNDER THIS TITLE, INCLUDING DISPUTES OVER:

(1) THE CUSTODIAN'S APPLICATION OF AN EXEMPTION;

(2) REDACTIONS OF INFORMATION IN THE PUBLIC RECORD;

(3) THE FAILURE OF THE CUSTODIAN TO PRODUCE A PUBLIC RECORD IN A TIMELY MANNER OR TO DISCLOSE ALL RECORDS RELEVANT TO THE REQUEST;

(4) OVERLY BROAD REQUESTS FOR PUBLIC RECORDS;

(5) THE AMOUNT OF TIME A CUSTODIAN NEEDS, GIVEN AVAILABLE STAFF AND RESOURCES, TO PRODUCE PUBLIC RECORDS;

(6) A REQUEST FOR OR DENIAL OF A FEE WAIVER UNDER § 4-206(E) OF THIS TITLE; AND

(7) REPETITIVE OR REDUNDANT REQUESTS FROM AN APPLICANT.

(B) (1) WHEN RESOLVING DISPUTES UNDER THIS SECTION, THE OMBUDSMAN MAY NOT:

(I) COMPEL A CUSTODIAN TO DISCLOSE PUBLIC RECORDS OR REDACTED INFORMATION IN THE CUSTODIAN'S PHYSICAL CUSTODY TO THE OMBUDSMAN OR AN APPLICANT; OR

(II) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, DISCLOSE INFORMATION RECEIVED FROM AN APPLICANT OR CUSTODIAN WITHOUT WRITTEN CONSENT FROM THE APPLICANT AND CUSTODIAN.

(2) THE OMBUDSMAN MAY DISCLOSE INFORMATION RECEIVED FROM AN APPLICANT OR CUSTODIAN TO THE ASSISTANT ATTORNEY GENERAL ASSIGNED TO THE OFFICE OF THE OMBUDSMAN."

AMENDMENT NO. 8

On pages 14 and 15, strike in their entirety the lines beginning with line 21 on page 14 through line 8 on page 15, inclusive.

On page 15, in lines 16 and 17, in each instance, after "10" insert "WORKING"; in line 17, after "WRITING" insert "OR BY ELECTRONIC MAIL"; in line 20, strike "THE

DOCUMENTS THAT ARE BEING RETRIEVED;” and substitute “AN ESTIMATE OF THE RANGE OF FEES THAT MAY BE CHARGED TO COMPLY WITH THE REQUEST FOR PUBLIC RECORDS;”; strike beginning with “**IF**” in line 22 down through “**DISPUTE**” in line 24 and substitute “FAILURE TO PRODUCE THE PUBLIC RECORD IN ACCORDANCE WITH THIS SUBSECTION CONSTITUTES A DENIAL OF AN APPLICATION THAT MAY NOT BE CONSIDERED THE RESULT OF A BONA FIDE DISPUTE UNLESS THE CUSTODIAN HAS COMPLIED WITH PARAGRAPH (2) OF THIS SUBSECTION AND IS WORKING WITH THE APPLICANT IN GOOD FAITH”; and strike beginning with the first bracket in line 26 down through “**(II)**” in line 28 and substitute “**(I)**”.

On page 16, strike in their entirety lines 1 and 2; in lines 3, 6, and 9, strike “**2.**”, “**3.**”, and “**(III)**”, respectively, and substitute “**1.**”, “**2.**”, and “**(II)**”, respectively; in line 3, strike “, INCLUDING AN” and substitute “AND, IF INSPECTION IS DENIED UNDER § 4-343 OF THIS TITLE, A BRIEF”; strike beginning with “**HOW**” in line 4 down through “**DISCLOSURE**” in line 5 and substitute “WHY THE DENIAL IS NECESSARY”; in line 6, strike “and”; after line 6, insert:

“3. WITHOUT DISCLOSING THE PROTECTED INFORMATION, A BRIEF DESCRIPTION OF THE UNDISCLOSED RECORD THAT WILL ENABLE THE APPLICANT TO ASSESS THE APPLICABILITY OF THE LEGAL AUTHORITY FOR THE DENIAL; AND”;

in line 11, strike “**DENY OR**”; in line 14, strike “With the consent of the applicant, any” and substitute “ANY”; in the same line, after “section” insert “**:**”

(1) WITH THE CONSENT OF THE APPLICANT;”;

and in line 15, after “days” insert “; **AND**”

(2) IF THE APPLICANT SEEKS RESOLUTION OF A DISPUTE UNDER § 4-1B-04 OF THIS TITLE, SHALL BE EXTENDED PENDING RESOLUTION OF THAT DISPUTE”.

AMENDMENT NO. 9

On pages 16 and 17, strike in their entirety the lines beginning with line 19 on page 16 through line 2 on page 17, inclusive.

On page 17, in line 3, strike “**(3)**” and substitute “**(2)**”; in line 6, strike “**(4)**” and substitute “**(3)**”; strike beginning with the colon in line 11 down through “**IS**” in line 14; in line 16, strike “**REPRODUCING**” and substitute “**THE SEARCH FOR, PREPARATION OF, AND REPRODUCTION OF**”; in line 17, strike “**REQUESTED FOR A NONCOMMERCIAL PURPOSE**”; after line 18, insert:

“(2) THE STAFF AND ATTORNEY REVIEW COSTS INCLUDED IN THE CALCULATION OF ACTUAL COSTS INCURRED UNDER THIS SECTION SHALL BE PRORATED FOR EACH INDIVIDUAL’S SALARY AND ACTUAL TIME ATTRIBUTABLE TO THE SEARCH FOR AND PREPARATION OF A PUBLIC RECORD UNDER THIS SECTION.”;

strike in their entirety lines 19 through 27, inclusive; in line 28, strike “**(1)**”; in the same line, strike the brackets; in the same line, strike “**5**”; and strike in their entirety lines 30 through 32, inclusive.

On page 18, after line 9, insert:

“(2) (I) THE APPLICANT IS INDIGENT AND FILES AN AFFIDAVIT OF INDIGENCY; OR”;

in line 10, strike “(2)” and substitute “**(II)**”; and in line 12, strike “**OR THAT THE APPLICANT IS INDIGENT**”.

AMENDMENT NO. 10

On page 18, strike in their entirety lines 13 through 27, inclusive, and substitute:

“4-301.

(A) [A] SUBJECT TO SUBSECTION (B) OF THIS SECTION, A custodian shall deny inspection of a public record or any part of a public record if:

(1) by law, the public record is privileged or confidential; or

(2) the inspection would be contrary to:

(i) a State statute;

(ii) a federal statute or a regulation that is issued under the statute and has the force of law;

(iii) the rules adopted by the Court of Appeals; or

(iv) an order of a court of record.

(B) IF AN APPLICANT FILES A COMPLAINT WITH THE OMBUDSMAN CHALLENGING A DENIAL OR THE APPLICATION OF AN EXEMPTION UNDER THIS SUBTITLE, THE CUSTODIAN SHALL DEMONSTRATE THAT:

(1) THE DENIAL OR THE EXEMPTION IS CLEARLY APPLICABLE TO THE REQUESTED PUBLIC RECORD; AND

(Over)

(2) IF INSPECTION IS DENIED UNDER PART IV OF THIS SUBTITLE, THE HARM FROM DISCLOSURE OF THE PUBLIC RECORD IS GREATER THAN THE PUBLIC INTEREST IN ACCESS TO THE INFORMATION IN THE PUBLIC RECORD.

On page 19, in line 10, after “(a)” insert “**(1)**”; in the same line, strike “Whenever” and substitute “**SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, WHENEVER**”; strike beginning with “for” in line 12 down through “located” in line 15; and after line 15, insert:

“(2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A COMPLAINANT OR CUSTODIAN MAY APPEAL TO THE CIRCUIT COURT A DECISION ISSUED BY THE STATE PUBLIC INFORMATION ACT COMPLIANCE BOARD AS PROVIDED UNDER § 4-1A-10 OF THIS TITLE.

(3) A COMPLAINT OR AN APPEAL UNDER THIS SUBSECTION SHALL BE FILED WITH THE CIRCUIT COURT FOR THE COUNTY WHERE:

(I) THE COMPLAINANT RESIDES OR HAS A PRINCIPAL PLACE OF BUSINESS; OR

(II) THE PUBLIC RECORD IS LOCATED.”.

AMENDMENT NO. 11

On page 20, in line 15, strike the third bracket; in line 16, strike “**], IN THE ABSENCE OF A BONA FIDE DISPUTE,**”; in line 21, strike “**STATUTORY DAMAGES AND**”; in line 25, strike “**(I)**”; in line 26, strike “**PARAGRAPHS**” and substitute “**PARAGRAPH**”; in the same line, strike “**OR (2)**”; strike beginning with “**SHALL**” in line 26 down through “**SUBSECTION**” in line 30; and strike beginning with “**PER**” in line 30 down through “**TITLE**” in line 31.

AMENDMENT NO. 12

On page 21, in line 8, strike the brackets; in the same line, strike “**SHALL**”; in line 10, strike “3.” and substitute “2.”; in lines 13 and 14, in each instance, strike “one member” and substitute “two members”; after line 14, insert:

“SECTION 3. AND BE IT FURTHER ENACTED, That the Office of the Attorney General, in consultation with the Maryland Association of Counties, the Maryland Municipal League, and stakeholders from the custodian, news media, and open government communities, shall submit an interim report on or before December 31, 2016, on its preliminary findings and a final report on or before December 31, 2017, to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly, on its findings and recommendations for improving the implementation of the Public Information Act, including:

(1) whether the neutrality and the statutory duties of the State Public Information Act Compliance Board are appropriate, including whether the Board should be authorized to impose statutory damages and whether the functions of the Board and the Public Access Ombudsman should be modified;

(2) the merits and feasibility of merging the State Open Meetings Law Compliance Board with the State Public Information Act Compliance Board;

(3) the use of fee waivers in general and for reasons of indigency, including how often waivers are requested, denied, or granted, to include the amount of the fees that have been waived as a result;

(4) an analysis of the denial process used by custodians;

(5) an analysis of requested public records that are held by a nongovernmental custodian and the appropriate remedies to ensure public access to those records; and

(Over)

(6) an analysis of State law exemptions outside of the Public Information Act.;

in line 15, strike “Section 1 of”; in line 16, strike “2016” and substitute “2015”; and strike in their entirety lines 17 and 18.