

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 72 (Senator Kagan)
Education, Health, and Environmental Affairs

Open Meetings Act - Requirements for State Agencies and Local Boards of
Elections (Maryland Transparency Act of 2021)

This bill requires a public body that is a State agency in the Executive Branch or a local board of elections to make its meeting agendas and all meeting materials publicly available on its website at least 48 hours in advance of each open meeting or, for a meeting that is held in response to an emergency, natural disaster, or any other unanticipated situation, as far in advance as practicable. A specified public body must also make publicly available on its website live and archived video or audio and minutes of each portion of a meeting that is held in open session. For specified public bodies with fewer than five employees, the bill's requirements do not apply until October 1, 2022.

Fiscal Summary

State Effect: Expenditures for affected State agencies increase, likely minimally, beginning in FY 2022, as discussed below. Revenues are not affected.

Local Effect: Local government expenditures increase beginning in FY 2022 for local boards of elections to comply with the bill's requirements. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: A public body that is a State agency in the Executive Branch or a local board of elections must make available on its website, for each portion of a meeting that is held in open session, (1) live video or audio streaming; (2) a complete and unedited

archived video or audio recording; and (3) meeting minutes. Archived recordings must be available on the public body's website for at least one year after the date of the meeting. Meeting minutes must be discussed and approved as soon as practicable and in a timely manner, posted within two business days after the minutes are approved, and remain available on the public body's website for at least five years after the date of the meeting. A public body may, however, comply with this requirement by posting a searchable transcript of the meeting video or audio.

If a public body fails to make meeting agendas and meeting materials available on its website in accordance with the bill, a person may file a petition with the circuit court alleging a violation, as provided under current law. The bill also authorizes a person to file a petition alleging a violation of the existing, general requirement that a public body prepare minutes of its sessions.

Current Law: Chapter 202 and 203 of 2020 required several State agencies (the Maryland Stadium Authority (MSA); State Board of Elections (SBE); Emergency Number Systems Board within the Department of Public Safety and Correctional Services (DPSCS); Public Service Commission (PSC); and Maryland Transportation Authority (MDTA)) to make available on their websites (1) meeting agendas, generally 48 hours in advance; (2) live video streaming of open meetings; (3) meeting minutes, within two days of approval; and (4) archived meeting minutes and recordings. The bill generally expands the application of these requirements to any public body that is a State agency and local boards of elections.

Open Meetings Act, Generally

Under Maryland's Open Meetings Act, with limited exceptions, a public body must (1) meet in open session in places reasonably accessible to potential attendees and (2) provide reasonable advance notice of the time and location of meetings, including, when appropriate, whether any portion of a meeting will be in closed session. A "public body" is any entity that (1) consists of at least two individuals and (2) is created by the Maryland Constitution; a State statute; a county or municipal charter; a memorandum of understanding or a master agreement to which a majority of the county boards of education and the Maryland State Department of Education (MSDE) are signatories; an ordinance; a rule, resolution, or bylaw; or an executive order of the Governor or of the chief executive authority of a political subdivision. Exclusions from the definition of "public body" include juries, the Governor's cabinet and Executive Council, judicial nominating commissions, and single-member entities, among others.

Guidance provided by the Office of the Attorney General (OAG) indicates that when the meeting "place" is a conference call, the public can be provided access through a call-in number or by access to a meeting room with a speakerphone.

Agendas

Generally, a public body must make an agenda available to the public prior to meeting in an open session. The agenda must include known items of business or topics to be discussed at the meeting and indicate whether the public body expects to close any portion of the meeting in accordance with State law. The public body is not required to include in the agenda information pertaining to a closed portion of the meeting. If a public body is unable to comply with specified deadlines for the release of a meeting agenda because the meeting is scheduled in response to an emergency, a natural disaster, or any other unanticipated situation, the public body must make available, on request, an agenda of the meeting within a reasonable time after the meeting occurs.

Minutes

As soon as practicable after an open session, a public body must prepare minutes of the meeting. The minutes must reflect each item that the public body considered, the action it took on each item, and each vote that was recorded. If a public body meets in closed session, the minutes for a public body's next open session must include a summary that includes specified information about the proceedings of the closed meeting. A public body need not prepare written minutes of an open session if (1) live and archived video or audio streaming of the open session is available or (2) if the public body votes on legislation and the individual votes taken by each participating member of the public body are promptly posted on the Internet.

With limited exceptions, minutes of a public body must be available for public inspection during normal business hours. A public body must retain a copy of the minutes of each session and any specified recording for at least five years and, to the extent practicable, post them online.

Compliance

The State Open Meetings Law Compliance Board must receive, review, and resolve complaints from any person alleging a violation of the Open Meetings Act and issue a written opinion as to whether a violation has occurred. The opinions of the board are advisory only. The board may not require or compel any specific actions by a public body. By October 1 each year, the board must submit an annual report to the Governor and the General Assembly that includes specified information about the number, nature, and disposition of cases brought before it. In addition, the board must post the names of public bodies determined to have violated the Open Meetings Act and the opinions that describe the violations on the Open Meetings Act page of OAG's website.

Enforcement

If a public body fails to comply with specified sections of the Open Meetings Act (General Provisions § 3-301 (“Open sessions generally required”); § 3-302 (“Notice”); § 3-303 (“Attendance”); § 3-305 (“Closed sessions”); or § 3-306(c) (“Contents of minutes”)), any person may file a petition with the circuit court that asks the court to determine the applicability of those sections, require the public body to comply, or, under limited circumstances, void the action of the public body. A petition generally must be filed within 45 days of the violation.

State Expenditures: To the extent that public bodies subject to the bill’s requirements do not currently stream and archive video or audio recordings of their open meetings, expenditures for affected State agencies increase in fiscal 2022 (or, for public bodies with fewer than five employees, fiscal 2023) due to one-time equipment and other start-up costs. Expenditures increase minimally thereafter for ongoing streaming, storage, and maintenance costs.

The Department of Information Technology advises that, in fiscal 2018, it procured a three-year statewide contract with a livestreaming services vendor. For agencies that choose to utilize this service, one-time equipment installation and fees are estimated at \$1,500, and ongoing streaming and storage costs total \$300 per month.

As noted above, State law already requires MSA, SBE, PSC, MDTA, and the Emergency Number Systems Board within DPSCS to stream and archive video of their open meetings. In addition, the Board of Public Works and MSDE advise that the bill generally codifies their existing practice. For agencies that are already required or equipped to stream and archive meetings and recordings, expenditures are unaffected.

Local Expenditures: Local government expenditures increase beginning in fiscal 2022 (or, for local boards of elections with fewer than five employees, fiscal 2023) due to one-time startup costs and ongoing monthly or annual costs related to streaming and archiving of meeting video or audio. Costs likely vary by jurisdiction.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 344 (Delegate Korman) - Health and Government Operations.

Information Source(s): Department of Information Technology; Department of Commerce; Secretary of State; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; University System of Maryland; Department of Budget and Management; Department of General Services; Maryland Department of Health; Department of Juvenile Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Board of Public Works; Department of State Police; Maryland Department of Transportation; Maryland State Board of Elections; Maryland Insurance Administration; Public Service Commission; Maryland Stadium Authority; Department of Legislative Services

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Analysis by: Elizabeth J. Allison

Direct Inquiries to:
(410) 946-5510
(301) 970-5510