

TESTIMONY IN SUPPORT OF SB 590
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William Poole

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I fully support passage of SB 590. After my bullet points, I will outline my background that justifies my rendering an opinion on this proposed legislation. Additional paragraphs then explain my reasoning.

I have two principal points:

- The Public Information Act (PIA) is not working as well as it should because there is no effective enforcement mechanism. For that reason, where the Act is most needed it may be least effective. Maryland government needs citizen input that may at times come through document demands that expose improper activities by state agencies.
- To use management lingo, the PIA is a management “control” to assure effective performance by Maryland agencies. To understand the importance of effective controls, consider the disastrous failure of another control—the audit reviews by the Office of Legislative Audits. The OLA did its job when it issued adverse audit findings on the information security systems and practices of the State Department of Assessments and Taxation (SDAT) in 2007, 2010, 2013 and 2018. Repeat findings are a huge red flag. SDAT concurred each time but did not do enough fast enough to strengthen its IT security. Thus, SDAT’s systems came down in the Baltimore ransomware attack last year. This is the type of risk that arises from inadequate enforcement of OLA findings. OLA can do its job but if the Legislature fails to compel agencies to reform their practices the OLA effort will not succeed.

If the Legislature endorses posting of speed-limit signs but fails to provide for state troopers and radar detectors, then speed limits will not be effective. It is just that simple.

The OLA Hotline is another important control. OLA’s 2019 Hotline report says that call volume in 2018 was 455. Another control works through Maryland Whistleblower laws. In my testimony, I concentrate on the Public Information Act and refer to experience with the Office of Legislative Audit to illustrate the consequences of an inadequate enforcement mechanism. This general point applies to all controls.

My ten years as President and CEO of the Federal Reserve Bank of St. Louis gave me extensive experience in management of a complex organization. During my time in office—1998-2008—the bank had about 1,200 employees. The Federal Reserve System had roughly 22,000 employees at that time. I had policy responsibilities as a member of the Federal Open Market Committee, the Fed’s primary monetary policy body. It was important that I collect as much relevant information as I could and make sound decisions based on that information, monetary theory and empirical work in macroeconomics. I made frequent speeches in my district and beyond, always listening

to gather and convey information. During my tenure, I sat on a Fed committee that had system-wide managerial responsibilities—the Information Technology Oversight Committee (ITOC)—and I was chairman of that committee for several years.

Many decades ago, most complex organizations established a management framework that relied importantly on an internal audit function. In the corporate world shareholders also came to rely on an external audit firm to study a company's financial accounts and certify that the accounts accurately reflected accepted accounting principles. In this testimony, I concentrate on the internal audit function.

In 1921, Congress established the General Accounting Office, which is now called the General Accountability Office. In Maryland, the corresponding entity is called the Office of Legislative Audits (OLA); its history can be traced back to 1906.

In the business world, customers certainly do file complaints but mostly they simply move their business to another competing firm. Citizens do not have that opportunity with regard to government services they believe to be substandard or abusive. A citizen who files a complaint with an agency is often ignored. Filing a suit in court is rarely helpful because of the doctrine of sovereign immunity. Complaining to your representative in the Assembly might help, or might not. If the abuse is serious enough and you can attract the attention of a journalist, you might be able to create enough of a stink that something is done.

Because the mechanisms of accountability at the federal level were not functioning sufficiently well, in 1946 Congress passed the Freedom of Information Act. Maryland's version is the Public Information Act (PIA), passed in 1970. These acts permit citizens to require disclosure and it is sometimes the case that disclosure is enough to force agencies to change their decisions or practices.

At both the federal and state level, we have learned that FOIA and PIA do not enforce themselves. If an agency declines to produce requested documents, then in most cases it can wait until the requester abandons the effort to obtain documents. That is a fact the Legislature must face if it is serious about the policy specified in the PIA. The goals are noble; the practice does not live up to that standard. That is what SB 590 is about.

In the private sector, as I observed at the St. Louis Fed, there is a robust mechanism to force compliance with controls. The bank's lawyers would force compliance with a FOIA demand by collecting the requested documents themselves or developing the legal case for not complying. In turn, the lawyers know that they are subject to audit by the bank's internal audit department.

It is important to understand that the internal audit department reports directly to a private firm's board of directors and not through the CEO. This arrangement is parallel to the one in Maryland. The Office of Legislative Audits reports directly to the Legislature's Joint Audit Committee and not through the governor. This arrangement is parallel to the typical one in the private sector in which a firm's audit department reports to the audit committee of the board of directors.

As CEO I was responsible for the management of the bank. I always thought of internal audit as my friend. I did not want the risk that our computer systems might be compromised, for example, and can assure you that I had to deal with adverse audit findings more than once. Our auditors uncovered problems, reported to the audit committee of the board and the board insisted that I fix the problems. The board never

had to twist my arm because I trusted internal audit, understood its conclusions, and had an intense personal interest in seeing that the bank was well run.

I exercised authority through the first vice president, who was the bank's chief operating officer (COO), and the senior vice presidents who had the direct managerial responsibility. The point that must be emphasized is that FOIA, internal audit structures and other controls do not enforce themselves.

HB 502 is important because it is an effort to develop a genuine and practical enforcement mechanism to respect the principles of the PIA. If the Legislature is serious about government in the sunshine, this bill should pass readily.

Let me illustrate the importance of enforcement by referring to the experience of Maryland's OLA in attempting to improve information security. OLA issued an audit finding in 2007 that the State Department of Assessments and Taxation needed to improve its information security efforts. SDAT agreed. In 2010, OLA issued a repeat finding to SDAT on the same issue and SDAT again agreed. In 2013, another OLA finding in an audit of SDAT: "Malware protection on DAT workstations and servers need improvement." SDAT concurred. October 2018: "Finding 8. IDPS [Intrusion Detection and Prevention Systems] protection did not exist for untrusted traffic entering the DAT network and numerous DAT workstations were running an outdated and unsupported operating system. SDAT agrees with the finding; corrective action is in progress."

Let me be blunt. The only reason that OLA had to issue one warning after another is that the Legislature did not pay enough attention to OLA's findings and did not force SDAT to fix the vulnerabilities immediately.

The Baltimore ransomware attack demonstrates vividly that SDAT did not act with sufficient urgency to separate its computer applications from those operated by the City of Baltimore. This is not a partisan issue. Multiple applications can run on the same computer if configured correctly.

Does anyone know which door was left open for the malware attack on Baltimore last year? What we do know is that real-estate transactions stopped because SDAT, it would seem obvious to this observer, had not adequately protected its computer system despite repeated adverse audit findings. I hope this incident is etched into the Legislature's collective brain. It is a dramatic example of failure to pay enough attention to OLA findings and force the operating department to respect those findings: NOW, not later.

If citizens find major abuses, make document demands that are ignored, the outcome could be as costly as the ransomware attack. That is why SB 590 is needed, and urgently.

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William Poole is Distinguished Senior Scholar at the Mises Institute, Distinguished Scholar in Residence at the University of Delaware and Senior Advisor to Merk Investments.

Poole retired as President and CEO of the Federal Reserve Bank of St. Louis in March 2008. In that position, which he held from March 1998, he served on the Federal Reserve's main monetary policy body, the Federal Open Market Committee. During his ten years at the St. Louis Fed, he presented over 150 speeches on a wide variety of economic and finance topics. Working with his Research Director, Robert Rasche, he did pioneering research on the forecasting accuracy of the federal funds futures market.

Before joining the St. Louis Fed, Poole was Herbert H. Goldberger Professor of Economics at Brown University. He served on the Brown faculty from 1974 to 1998 and the faculty of The Johns Hopkins University from 1963 to 1969. Between these two university positions, he was senior economist at the Board of Governors of the Federal Reserve System in Washington. He held a Presidential appointment as a member of the Council of Economic Advisers in the first Reagan administration, from 1982 to 1985.

Swarthmore College awarded Poole his AB degree in 1959, with High Honors. He received his MBA and Ph.D. degrees from the University of Chicago in 1963 and 1966, respectively. Swarthmore honored him with the Doctor of Laws degree in 1989. He was inducted into The Johns Hopkins Society of Scholars in 2005 and presented with the Adam Smith Award by the National Association for Business Economics in 2006. In 2007, the Global Interdependence Center presented him its Frederick Heldring Award.

Poole has engaged in a wide range of professional activities, including publishing numerous papers in professional journals. He has published two books, *Money and the Economy: A Monetarist View*, in 1978, and *Principles of Economics*, in 1991. In 1980-81, he was a visiting economist at the Reserve Bank of Australia and in 1991, Bank Mees and Hope Visiting Professor of Economics at Erasmus University in Rotterdam. At various times, he served on advisory boards of the Federal Reserve Banks of Boston and New York, and the Congressional Budget Office. He was a senior fellow, Cato Institute, 2008-18.

Poole appears often on the speaking circuit and is well known for his commentary on current economic and financial developments. Recently, on September 14, 2018, he presented a paper, "Before Lehman," at a conference on the Financial Crisis held at the American Enterprise Institute. (A video is available on C-Span 2.)

He is a member of the American Economic Association and the National Association for Business Economics.

Poole was born and raised in Wilmington, Delaware. He has four sons.

Contact Information

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