

HOUSE BILL 658

P3

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By: Delegates Carter, Glass, Hough, Parrott, ~~and Smigiel~~ Smigiel, Hammen, Pendergrass, Bromwell, Costa, Cullison, Donoghue, Elliott, Hubbard, Kach, A. Kelly, Kipke, Krebs, McDonough, Morhaim, Murphy, Nathan-Pulliam, Oaks, Pena-Melnyk, Ready, Reznik, Tarrant, and V. Turner

Introduced and read first time: January 31, 2014

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 12, 2014

CHAPTER _____

1 AN ACT concerning

2 ~~Public Information Act – State Public Information Act Compliance Board –~~
3 ~~Establishment~~

4 Joint Committee on Transparency and Open Government – Study on Appeals
5 Under the Maryland Public Information Act

6 FOR the purpose of ~~establishing the State Public Information Act Compliance Board;~~
7 ~~providing for the composition, chair, terms, and meetings of the Board;~~
8 ~~prohibiting a member of the Board from receiving certain compensation, but~~
9 ~~authorizing the reimbursement of certain expenses; requiring the Office of the~~
10 ~~Attorney General to provide staff for the Board; providing for the powers and~~
11 ~~duties of the Board; authorizing any person to file a certain complaint with the~~
12 ~~Board; requiring that the complaint contain certain information and be signed~~
13 ~~by the complainant; requiring the Board to take certain action regarding a~~
14 ~~complaint; requiring a custodian who receives a complaint from the Board to file~~
15 ~~a certain response within a certain time period; requiring the Board to maintain~~
16 ~~the confidentiality of a certain public record; authorizing the Board, under~~
17 ~~certain circumstances, to hold a certain conference; providing that a certain~~
18 ~~conference held by the Board is not a contested case; providing that compliance~~
19 ~~by a custodian with an order of the Board is not a certain admission and may~~
20 ~~not be used as evidence in a certain proceeding; repealing certain provisions of~~
21 ~~law related to the administrative review of a decision to deny inspection of a~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~public record; specifying the terms of the initial members of the Board; defining~~
 2 ~~a certain term; and generally relating to the State Public Information Act~~
 3 ~~Compliance Board~~ requiring the Joint Committee on Transparency and Open
 4 Government to conduct a study on how to improve the administrative process
 5 for resolving appeals under the Maryland Public Information Act; requiring that
 6 the study take into consideration certain factors; requiring the Joint Committee
 7 to report to certain committees on or before a certain date; providing for the
 8 termination of this Act; and generally relating to the Joint Committee on
 9 Transparency and Open Government and the Study on Appeals Under the
 10 Maryland Public Information Act.

11 ~~BY repealing and reenacting, with amendments,~~
 12 ~~Article — General Provisions~~
 13 ~~Section 4-101; and the amended part designation “Part VI. Judicial Review”~~
 14 ~~immediately preceding Section 4-361~~
 15 ~~Annotated Code of Maryland~~
 16 ~~(As enacted by Chapter _____ (H.B. 270) of the Acts of the General Assembly of~~
 17 ~~2014)~~

18 ~~BY adding to~~
 19 ~~Article — General Provisions~~
 20 ~~Section 4-1A-01 through 4-1A-09 to be under the new subtitle “Subtitle 1A.~~
 21 ~~State Public Information Act Compliance Board”~~
 22 ~~Annotated Code of Maryland~~
 23 ~~(As enacted by Chapter _____ (H.B. 270) of the Acts of the General Assembly of~~
 24 ~~2014)~~

25 ~~BY repealing~~
 26 ~~Article — General Provisions~~
 27 ~~Section 4-361~~
 28 ~~Annotated Code of Maryland~~
 29 ~~(As enacted by Chapter _____ (H.B. 270) of the Acts of the General Assembly of~~
 30 ~~2014)~~

31 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 32 MARYLAND, That ~~the Laws of Maryland read as follows:~~

33 (a) The Joint Committee on Transparency and Open Government, as
 34 established under § 2-10A-14 of the State Government Article, shall conduct a study
 35 on how to improve the administrative process for resolving appeals under the
 36 Maryland Public Information Act.

37 (b) The study shall take into consideration:

38 (1) appeals from denials and fees charged under the Act;

1 ~~(1) a person or governmental unit that is the subject of a public record~~
 2 ~~or a designee of the person or governmental unit;~~

3 ~~(2) if the person has a legal disability, the parent or legal~~
 4 ~~representative of the person; or~~

5 ~~(3) as to requests for correction of certificates of death under §~~
 6 ~~5-310(d)(2) of the Health General Article, the spouse, adult child, parent, adult~~
 7 ~~sibling, grandparent, or guardian of the person of the deceased at the time of the~~
 8 ~~deceased's death.~~

9 ~~[(f)] (G) (1) "Personal information" means information that identifies an~~
 10 ~~individual.~~

11 ~~(2) Except as provided in § 4-355 of this title, "personal information"~~
 12 ~~includes an individual's:~~

13 ~~(i) name;~~

14 ~~(ii) address;~~

15 ~~(iii) driver's license number or any other identification number;~~

16 ~~(iv) medical or disability information;~~

17 ~~(v) photograph or computer-generated image;~~

18 ~~(vi) Social Security number; and~~

19 ~~(vii) telephone number.~~

20 ~~(3) "Personal information" does not include an individual's:~~

21 ~~(i) driver's status;~~

22 ~~(ii) driving offenses;~~

23 ~~(iii) five-digit zip code; or~~

24 ~~(iv) information on vehicular accidents.~~

25 ~~[(g)] (H) "Political subdivision" means:~~

26 ~~(1) a county;~~

27 ~~(2) a municipal corporation;~~

1 ~~(3) an unincorporated town;~~

2 ~~(4) a school district; or~~

3 ~~(5) a special district.~~

4 ~~[(h)](1) (1) "Public record" means the original or any copy of any~~
5 ~~documentary material that:~~

6 ~~(i) is made by a unit or an instrumentality of the State or of a~~
7 ~~political subdivision or received by the unit or instrumentality in connection with the~~
8 ~~transaction of public business; and~~

9 ~~(ii) is in any form, including:~~

10 ~~1. a card;~~

11 ~~2. a computerized record;~~

12 ~~3. correspondence;~~

13 ~~4. a drawing;~~

14 ~~5. film or microfilm;~~

15 ~~6. a form;~~

16 ~~7. a map;~~

17 ~~8. a photograph or photostat;~~

18 ~~9. a recording; or~~

19 ~~10. a tape.~~

20 ~~(2) "Public record" includes a document that lists the salary of an~~
21 ~~employee of a unit or an instrumentality of the State or of a political subdivision.~~

22 ~~(3) "Public record" does not include a digital photographic image or~~
23 ~~signature of an individual, or the actual stored data of the image or signature,~~
24 ~~recorded by the Motor Vehicle Administration.~~

25 ~~**SUBTITLE 1A. STATE PUBLIC INFORMATION ACT COMPLIANCE BOARD.**~~

26 ~~**4-1A-01.**~~

~~THERE IS A STATE PUBLIC INFORMATION ACT COMPLIANCE BOARD.~~

~~4-1A-02.~~

~~(A) (1) THE BOARD CONSISTS OF THREE MEMBERS.~~

~~(2) AT LEAST ONE OF THE MEMBERS OF THE BOARD SHALL BE AN ATTORNEY ADMITTED TO THE MARYLAND BAR.~~

~~(3) THE GOVERNOR SHALL APPOINT THE MEMBERS WITH THE ADVICE AND CONSENT OF THE SENATE.~~

~~(B) FROM AMONG THE MEMBERS OF THE BOARD, THE GOVERNOR SHALL APPOINT A CHAIR.~~

~~(C) (1) THE TERM OF A MEMBER IS 3 YEARS.~~

~~(2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY THE TERMS PROVIDED FOR MEMBERS OF THE BOARD ON OCTOBER 1, 2014.~~

~~(3) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL A SUCCESSOR IS APPOINTED.~~

~~(4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED.~~

~~(5) A MEMBER MAY NOT SERVE FOR MORE THAN TWO CONSECUTIVE 3 YEAR TERMS.~~

~~4-1A-03.~~

~~(A) A MAJORITY OF THE FULL AUTHORIZED MEMBERSHIP OF THE BOARD IS A QUORUM.~~

~~(B) THE BOARD SHALL DETERMINE THE TIMES AND PLACES OF ITS MEETINGS.~~

~~(C) A MEMBER OF THE BOARD:~~

~~(1) MAY NOT RECEIVE COMPENSATION AS A MEMBER OF THE BOARD; BUT~~

1 ~~(2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE~~
2 ~~STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE~~
3 ~~BUDGET.~~

4 ~~(D) THE OFFICE OF THE ATTORNEY GENERAL SHALL PROVIDE STAFF~~
5 ~~FOR THE BOARD.~~

6 ~~4-1A-04.~~

7 ~~(A) THE BOARD SHALL:~~

8 ~~(1) RECEIVE, REVIEW, AND, SUBJECT TO § 4-1A-07 OF THIS~~
9 ~~SUBTITLE, RESOLVE COMPLAINTS FROM ANY PERSON ALLEGING THAT A~~
10 ~~CUSTODIAN:~~

11 ~~(I) DENIED INSPECTION OF A PUBLIC RECORD IN~~
12 ~~VIOLATION OF THIS TITLE; OR~~

13 ~~(II) CHARGED AN UNREASONABLE FEE OF MORE THAN \$500~~
14 ~~UNDER § 4-206 OF THIS TITLE;~~

15 ~~(2) ISSUE A WRITTEN OPINION AS TO WHETHER A VIOLATION HAS~~
16 ~~OCCURRED; AND~~

17 ~~(3) ORDER THE CUSTODIAN TO:~~

18 ~~(I) IF THE BOARD FINDS THAT THE CUSTODIAN DENIED~~
19 ~~INSPECTION OF A PUBLIC RECORD IN VIOLATION OF THIS TITLE, PRODUCE THE~~
20 ~~PUBLIC RECORD FOR INSPECTION; OR~~

21 ~~(II) IF THE BOARD FINDS THAT THE CUSTODIAN CHARGED~~
22 ~~AN UNREASONABLE FEE OF MORE THAN \$500 UNDER § 4-206 OF THIS TITLE,~~
23 ~~REDUCE THE FEE TO AN AMOUNT DETERMINED BY THE BOARD TO BE~~
24 ~~REASONABLE AND REFUND THE DIFFERENCE.~~

25 ~~(B) THE BOARD SHALL:~~

26 ~~(1) ADOPT REGULATIONS TO CARRY OUT THIS TITLE;~~

27 ~~(2) STUDY ONGOING COMPLIANCE WITH THIS TITLE BY~~
28 ~~CUSTODIANS; AND~~

29 ~~(3) MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY FOR~~
30 ~~IMPROVEMENTS IN THIS TITLE.~~

1 ~~(C) (1) ON OR BEFORE OCTOBER 1 OF EACH YEAR, THE BOARD~~
2 ~~SHALL SUBMIT A REPORT TO THE GOVERNOR AND, SUBJECT TO § 2-1246 OF~~
3 ~~THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.~~

4 ~~(2) THE REPORT SHALL:~~

5 ~~(I) DESCRIBE THE ACTIVITIES OF THE BOARD;~~

6 ~~(II) DESCRIBE THE OPINIONS OF THE BOARD;~~

7 ~~(III) STATE THE NUMBER AND NATURE OF COMPLAINTS~~
8 ~~FILED WITH THE BOARD AND DISCUSS COMPLAINTS THAT THE INSPECTION OF~~
9 ~~PUBLIC RECORDS WAS DENIED; AND~~

10 ~~(IV) RECOMMEND ANY IMPROVEMENTS TO THIS TITLE.~~

11 ~~4-1A-05.~~

12 ~~(A) ANY PERSON MAY FILE A WRITTEN COMPLAINT WITH THE BOARD~~
13 ~~SEEKING A WRITTEN OPINION AND ORDER FROM THE BOARD ALLEGING THAT A~~
14 ~~CUSTODIAN:~~

15 ~~(1) DENIED INSPECTION OF A PUBLIC RECORD IN VIOLATION OF~~
16 ~~THIS TITLE; OR~~

17 ~~(2) CHARGED AN UNREASONABLE FEE OF MORE THAN \$500~~
18 ~~UNDER § 4-206 OF THIS TITLE.~~

19 ~~(B) THE COMPLAINT SHALL:~~

20 ~~(1) IDENTIFY THE CUSTODIAN THAT IS THE SUBJECT OF THE~~
21 ~~COMPLAINT;~~

22 ~~(2) DESCRIBE THE ACTION OF THE CUSTODIAN, THE DATE OF THE~~
23 ~~ACTION, AND THE CIRCUMSTANCES OF THE ACTION; AND~~

24 ~~(3) BE SIGNED BY THE COMPLAINANT.~~

25 ~~4-1A-06.~~

26 ~~(A) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, ON~~
27 ~~RECEIPT OF THE WRITTEN COMPLAINT, THE BOARD PROMPTLY SHALL:~~

1 ~~(1) SEND THE COMPLAINT TO THE CUSTODIAN IDENTIFIED IN THE~~
2 ~~COMPLAINT; AND~~

3 ~~(2) REQUEST THAT A RESPONSE TO THE COMPLAINT BE SENT TO~~
4 ~~THE BOARD.~~

5 ~~(B) (1) THE CUSTODIAN SHALL FILE A WRITTEN RESPONSE TO THE~~
6 ~~COMPLAINT WITHIN 30 DAYS AFTER THE CUSTODIAN RECEIVES THE~~
7 ~~COMPLAINT.~~

8 ~~(2) ON REQUEST OF THE BOARD, THE CUSTODIAN SHALL~~
9 ~~INCLUDE WITH ITS WRITTEN RESPONSE TO THE COMPLAINT:~~

10 ~~(I) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN~~
11 ~~DENIED INSPECTION OF A PUBLIC RECORD IN VIOLATION OF THIS TITLE:~~

12 ~~1. A COPY OF THE PUBLIC RECORD; AND~~

13 ~~2. THE PROVISION OF LAW THAT THE CUSTODIAN~~
14 ~~ALLEGES ALLOWS THE CUSTODIAN TO DENY INSPECTION OF THE PUBLIC~~
15 ~~RECORD; OR~~

16 ~~(H) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN~~
17 ~~CHARGED AN UNREASONABLE FEE OF MORE THAN \$500 UNDER § 4-206 OF THIS~~
18 ~~TITLE, THE BASIS FOR THE FEE THAT WAS CHARGED.~~

19 ~~(3) THE BOARD SHALL MAINTAIN THE CONFIDENTIALITY OF A~~
20 ~~PUBLIC RECORD SUBMITTED BY A CUSTODIAN UNDER PARAGRAPH (2) OF THIS~~
21 ~~SUBSECTION.~~

22 ~~(C) IF A WRITTEN RESPONSE IS NOT RECEIVED WITHIN 45 DAYS AFTER~~
23 ~~THE NOTICE IS SENT, THE BOARD SHALL DECIDE THE CASE ON THE FACTS~~
24 ~~BEFORE THE BOARD.~~

25 ~~4-1A-07.~~

26 ~~(A) (1) THE BOARD SHALL REVIEW THE COMPLAINT AND ANY~~
27 ~~RESPONSE.~~

28 ~~(2) IF THE INFORMATION IN THE COMPLAINT AND RESPONSE IS~~
29 ~~SUFFICIENT FOR MAKING A DETERMINATION, WITHIN 30 DAYS AFTER~~
30 ~~RECEIVING THE RESPONSE, THE BOARD SHALL ISSUE A WRITTEN OPINION AS~~
31 ~~TO WHETHER A VIOLATION OF THIS TITLE HAS OCCURRED OR WILL OCCUR.~~

1 ~~(B) (1) IF THE BOARD IS UNABLE TO REACH A DETERMINATION~~
2 ~~BASED ON THE WRITTEN SUBMISSIONS BEFORE IT, THE BOARD MAY SCHEDULE~~
3 ~~AN INFORMAL CONFERENCE TO HEAR FROM THE COMPLAINANT, THE~~
4 ~~CUSTODIAN, OR ANY OTHER PERSON WITH RELEVANT INFORMATION ABOUT THE~~
5 ~~SUBJECT OF THE COMPLAINT.~~

6 ~~(2) AN INFORMAL CONFERENCE SCHEDULED BY THE BOARD IS~~
7 ~~NOT A CONTESTED CASE WITHIN THE MEANING OF § 10-202(D) OF THE STATE~~
8 ~~GOVERNMENT ARTICLE.~~

9 ~~(3) THE BOARD SHALL ISSUE A WRITTEN OPINION WITHIN 30~~
10 ~~DAYS AFTER THE INFORMAL CONFERENCE.~~

11 ~~(C) (1) IF THE BOARD IS UNABLE TO RENDER AN OPINION ON A~~
12 ~~COMPLAINT WITHIN THE TIME PERIODS SPECIFIED IN SUBSECTION (A) OR (B)~~
13 ~~OF THIS SECTION, THE BOARD SHALL:~~

14 ~~(I) STATE IN WRITING THE REASON FOR ITS INABILITY TO~~
15 ~~RENDER AN OPINION; AND~~

16 ~~(II) ISSUE AN OPINION AS SOON AS POSSIBLE BUT NOT~~
17 ~~LATER THAN 90 DAYS AFTER THE FILING OF THE COMPLAINT.~~

18 ~~(2) AN OPINION OF THE BOARD MAY STATE THAT THE BOARD IS~~
19 ~~UNABLE TO RESOLVE THE COMPLAINT.~~

20 ~~(D) THE BOARD SHALL SEND A COPY OF THE WRITTEN OPINION TO THE~~
21 ~~COMPLAINANT AND THE AFFECTED CUSTODIAN.~~

22 ~~4-1A-08.~~

23 ~~(A) THE BOARD MAY SEND TO ANY CUSTODIAN IN THE STATE ANY~~
24 ~~WRITTEN OPINION THAT WILL PROVIDE THE CUSTODIAN WITH GUIDANCE ON~~
25 ~~COMPLIANCE WITH THIS TITLE.~~

26 ~~(B) ON REQUEST, THE BOARD SHALL PROVIDE A COPY OF A WRITTEN~~
27 ~~OPINION TO ANY PERSON.~~

28 ~~4-1A-09.~~

29 ~~COMPLIANCE BY A CUSTODIAN WITH AN ORDER OF THE BOARD:~~

30 ~~(1) IS NOT AN ADMISSION TO A VIOLATION OF THIS TITLE BY THE~~
31 ~~CUSTODIAN; AND~~

1 ~~(2) MAY NOT BE USED AS EVIDENCE IN A PROCEEDING~~
 2 ~~CONDUCTED IN ACCORDANCE WITH § 4-362 OF THIS TITLE.~~

3 ~~Part VI. [Administrative and] Judicial Review.~~

4 ~~[4-361.~~

5 ~~(a) This section does not apply when the official custodian denies inspection~~
 6 ~~temporarily under § 4-358 of this subtitle.~~

7 ~~(b) If a unit is subject to Title 10, Subtitle 2 of the State Government Article,~~
 8 ~~a person or governmental unit may seek administrative review in accordance with~~
 9 ~~that subtitle of a decision of the unit, under this subtitle, to deny inspection of any~~
 10 ~~part of a public record.~~

11 ~~(c) A person or governmental unit need not exhaust the remedy under this~~
 12 ~~section before filing suit.]~~

13 ~~SECTION 2. AND BE IT FURTHER ENACTED, That the terms of the initial~~
 14 ~~members of the State Public Information Act Compliance Board shall expire as~~
 15 ~~follows:~~

16 ~~(1) one member on June 30, 2016;~~

17 ~~(2) one member on June 30, 2017; and~~

18 ~~(3) one member on June 30, 2018.~~

19 ~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take~~
 20 ~~effect ~~October~~ July 1, 2014. It shall remain effective for a period of 1 year and, at the~~
 21 ~~end of June 30, 2015, with no further action required by the General Assembly, this~~
 22 ~~Act shall be abrogated and of no further force and effect.~~

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.