

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1088 (Delegate Cullison, *et al.*)
 Health and Government Operations

Open Meetings Act - Annual Reporting Requirement, Enforcement, and Training

This bill requires the State Open Meetings Law Compliance Board to include in its annual report the top issues identified in complaints and the public bodies that had a high volume of complaints and were in violation of the Open Meetings Law. The opinions of the board are no longer advisory, and the board may issue an order to require a public body to take corrective action and impose specified civil penalties. The bill also requires each officer of a public body, instead of only a designee, to complete a specified online training class on the requirements of the Open Meetings Law within 60 days after becoming an officer and every two years thereafter. Each public body must report to the board on officers who have completed the training requirements, and the Office of the Attorney General (OAG) must post that information on its website. Existing officers of a public body must complete the training class by November 30, 2016.

Fiscal Summary

State Effect: General fund expenditures increase by \$27,900 in FY 2017 for a part-time associate within OAG, primarily to assist with the bill’s reporting requirements, but also to monitor compliance. Out-year expenditures reflect annualization, elimination of one-time start-up costs, and inflation. The bill’s penalty provisions are not expected to materially affect State revenues.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	27,900	31,700	33,000	34,300	35,700
Net Effect	(\$27,900)	(\$31,700)	(\$33,000)	(\$34,300)	(\$35,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill does not materially affect local government operations or finances. The bill's requirement for public officers to complete training can be handled with existing budgeted resources. The bill's penalty provisions are not expected to materially affect local revenues.

Small Business Effect: None.

Analysis

Current Law: Under Maryland's Open Meetings Act, with limited exceptions, a "public body" must (1) provide adequate notice of the time and location of meetings and (2) meet in open session in a location that is reasonably accessible to attendees. 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 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.

The State Open Meetings Law Compliance Board is required to receive, review, and resolve complaints from any person alleging a violation of the Open Meetings Act, issue a written opinion as to whether a violation has occurred, and ensure compliance with the Open Meetings Act. The board, in conjunction with OAG, must develop and conduct educational programs on the requirements of the open meetings law for the staffs and attorneys of public bodies, the Maryland Municipal League (MML), and the Maryland Association of Counties (MACO). Annually by October 1, the board must submit a report to the Governor and the General Assembly describing:

- the activities of the board;
- the opinions of the board in any cases brought before it;
- the number and nature of complaints filed with the board, including a discussion of complaints concerning the reasonableness of the notice provided for meetings; and
- any recommendations for improvements to the provisions of the Open Meetings Act.

Each public body must (1) designate at least one of its employees, officers, or members to receive training on the requirements of the open meetings law and (2) forward a list of designated individuals to the State Open Meetings Law Compliance Board. Within

90 days after designation, a designated individual must complete either (1) an online class on the requirements of the open meetings law offered by OAG and the University of Maryland's Institute for Governmental Service and Research or (2) a class on the requirements of the open meetings law offered by MACO or MML through the Academy for Excellence in Local Governance.

The opinions of the State Open Meetings Compliance Board, which handles complaints alleging violations of the Open Meetings Act, are advisory only. The board may not require or compel any specific actions by a public body.

Under specified circumstances, if a public body fails to comply with specified provisions of the Open Meetings Act, a person may file a petition in a circuit court. However, a written opinion of the board may not be introduced as evidence in such a proceeding. A member of a public body that willfully participates in a meeting of the body with knowledge that the meeting is being held in violation of the Open Meetings Act is subject to a civil penalty of up to \$250 for the first violation and up to \$1,000 for each subsequent violation occurring within three years after the first violation.

Background: The [2015 Annual Report of the Open Meetings Compliance Board](#) reports there were 34 new complaints submitted during fiscal 2015.

State/Local Fiscal Effect: General fund expenditures increase by \$27,890 in fiscal 2017, which accounts for the bill's October 1, 2016 effective date. This estimate reflects the cost of hiring one part-time associate within OAG to assist with the additional reporting requirements, track the officers who participate in training, and impose fines. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	0.5
Salary and Fringe Benefits	\$23,301
Operating Expenses	<u>4,589</u>
Total FY 2017 OAG Expenditures	\$27,890

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

The exact impact of the bill's monetary penalties depends on the number and nature of violations that are found and imposed by the board, instead of through the circuit court. However, because relatively few complaints alleging violations of the Open Meetings Act are received each year and because the penalty provisions are similar to existing ones that may be imposed through the circuit court, the bill is not expected to materially affect State or local penalty revenues.

The University of Maryland's Institute for Governmental Service and Research provides the online training class to the public at no charge, so requiring all officers of a public body to complete that class, or one offered by MML or MACO, has no material fiscal impact.

Additional Information

Prior Introductions: None.

Cross File: SB 754 (Senator Raskin, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Association of Counties; Maryland Municipal League; Office of the Attorney General; University System of Maryland; Department of Health and Mental Hygiene; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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kb/lgc

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