

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 253 (The President)(By Request - Administration)
Education, Health, and Environmental Affairs

Legislative Transparency Act of 2017

This Administration bill (1) requires the General Assembly to make available to the public live and archived video streaming of all of the meetings of the Senate, House of Delegates, and standing committees, including committee hearings and voting sessions; (2) modifies reporting requirements and establishes new requirements for the Open Meetings Law Compliance Board (OMCB); (3) modifies requirements for public bodies under the Open Meetings Act; (4) alters provisions of the Maryland Public Ethics Law to require regulated lobbyists to report specified information when an Executive Branch employee is invited to a meal or reception; and (5) requires OMCB, the Department of Legislative Services (DLS), and the State Ethics Commission (SEC) to make specified reports and disclosures available to the public on specified websites or electronically.

The bill takes effect July 1, 2017.

Fiscal Summary

State Effect: General fund expenditures for DLS increase by \$2.2 million in FY 2018 to install video streaming equipment and hire staff to conduct the live video streaming of floor sessions and to provide closed-captioning services. Future year expenditures reflect annualization and ongoing costs. Special fund expenditures for SEC increase by \$20,000 in FY 2018 only for computer programming to post additional reports on the Internet. Revenues are not affected.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	2,163,000	1,384,700	1,401,400	1,418,800	1,437,300
SF Expenditure	20,000	0	0	0	0
Net Effect	(\$2,183,000)	(\$1,384,700)	(\$1,401,400)	(\$1,418,800)	(\$1,437,300)

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

Local Effect: The bill's changes can be handled with existing local resources.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). DLS concurs with this assessment.

Analysis

Bill Summary:

Maryland General Assembly Video Streaming

The bill requires the General Assembly to make live and archived video streaming available to the public for (1) each meeting of the Senate and House and (2) each meeting of a standing committee, including any hearings or voting sessions. The General Assembly must make reasonable accommodations, in compliance with federal, State, and local law, to ensure that the live and archived video streaming is in an accessible format for individuals who are blind, deaf, or hard of hearing.

Open Meetings Act and the Open Meetings Act Compliance Board

OMCB: The bill requires additional information to be included in OMCB's annual report that must be provided to the Governor and the General Assembly under current law. In addition to existing requirements, the annual report must (1) identify each public body that the board has found to have violated the Open Meetings Act; (2) identify the specific provisions of law that have been violated; and (3) identify the number of times each provision has been violated.

Education on Open Meetings Act and Requirements for Public Bodies: In addition to developing and conducting educational programs as it must do under existing law, the bill requires OMCB to distribute educational materials outlining the requirements of the Open Meetings Act directly to the staffs and attorneys of all public bodies, the Maryland Municipal League (MML), and the Maryland Association of Counties (MACo).

The bill also narrows the category of who is eligible to be designated for training on the Open Meetings Act. Specifically, a public body must designate at least one member of the public body *who has authority to close a meeting of the body* (as opposed to at least one employee, officer, or member of the public body) to receive training on the requirements of the Act. The bill also (1) repeals the requirement that a public body forward a list of the designees to OMCB and (2) requires that at least one designee be present at each open meeting of the public body; however, if the designee cannot be present, the body must

complete a specified compliance checklist and include the checklist in the meeting minutes. The Office of the Attorney General (OAG) must develop the compliance checklist.

The bill also requires OMCB to collaborate with the University of Maryland's Institute for Governmental Service and Research, MACo, and MML to (1) implement a process for reporting to OMCB the name and affiliation of the individuals who complete a class on the Open Meetings Act and (2) develop a list of contacts for public bodies to whom OMCB may send the educational materials, the compliance checklist, the OMCB annual report, and any other information OMCB determines would be useful to a public body in assisting with compliance with the Open Meetings Act. By December 1, 2017, OMCB must report on the results of the collaboration to specified legislative committees.

Maryland Public Ethics Law – Lobbyist Requirements Relating to Executive Employees

The bill requires a lobbyist to report meals and receptions to which an employee of the Executive Branch has been invited in the same way existing law requires for legislative units. Specifically, at least five days before the date of the meal or reception, a regulated lobbyist who invites an employee of the Executive Branch to a meal or reception must (1) extend a written invitation to the employee and (2) register the meal or reception with SEC, as specified. The executive employee registration report must include the date and location of the meal or reception and the name of each employee invited. SEC must post this information on its website once a week, in list form, as specified. As with the legislative unit meals and receptions report, (1) SEC must allow public inspection of the executive employee registration report during regular business hours and maintain a photocopy or an electronic copy of each report and (2) within 14 days after the meal or reception, a regulated lobbyist must report the total cost of the meal/reception, the name of each contributor, and the amount of the contribution.

Electronic/Internet Publication of Reports: In addition to the information SEC must publish on its website regarding executive employee registrations, the bill requires that several existing reports and new reports established by the bill be published electronically or online, as follows:

- all lobbying activity, business transaction, gift, and meal reports required under specified provisions of the Public Ethics Law, including the executive employee registration reports established by the bill, filed on or after May 31, 2018, must be available electronically for public review in a machine-readable, searchable, and analyzable format.
- DLS must publish on the General Assembly website its weekly listing of the date and location of upcoming meals or receptions for General Assembly legislative units required under existing law.

- OMCB must post, on the Open Meetings Act page of OAG’s website, the names of any public bodies determined to have violated the Open Meetings Act and the opinion that describes the violation.

Current Law:

Open Meetings Act/Public Bodies

Open Meetings Act, Generally: Under Maryland’s Open Meetings Act, with limited exceptions, a “public body” must (1) provide reasonable advance 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.

Compliance: OMCB is required to 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.

Educational Programs: 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, MML, and 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 board. Within 90 days after designation, a designated individual must complete either (1) an online class on the requirements of the Open Meetings Act 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.

Announcement of Open Meetings Act Violations: If OMCB determines that a violation of the Open Meetings Act has occurred, at the next open meeting of the public body after OMCB has issued its opinion, a member of the public body must announce the violation and orally summarize the opinion. A majority of the members of the public body must sign a copy of the opinion and return the signed copy to OMCB. The public body may not designate its counsel or another representative to provide the announcement and summary. The announcement of a violation at an open meeting is not an admission of a violation and may not be used as evidence in a circuit court hearing filed under specified provisions of the Open Meetings Act.

Minutes: As soon as practicable after each 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 meeting in closed session, the minutes for a public body's next open session must include (1) a statement of the time, place, and purpose of the closed session; (2) a record of the vote of each member as to closing the session; (3) the legal authority under which the session was closed; and (4) a listing of the topics discussed, persons present, and each action taken.

Minutes of each meeting must be made available to the public during normal business hours and must be retained by the public body for at least five years. A public body subject to the Open Meetings Act does not need to 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 individual public votes on legislation taken by members of the public body are posted promptly on the Internet.

Maryland Public Ethics Law and Regulated Lobbyists

The Maryland Public Ethics Law sets out requirements, prohibitions, and procedures that affect employees in the Legislative, Executive, and Judicial branches of government as well as members of the General Assembly and State officials for the purpose of maintaining people's trust in government and protecting against the improper influence and appearance of improper influence of government.

Regulated lobbyists are subject to various reporting requirements under the Public Ethics Law. A lobbyist must submit reports to SEC concerning (1) the lobbyist's general lobbying activities; (2) gifts to or for government officials, employees, and/or members of the immediate families of officials or employees, including food and beverages; and (3) any business transactions the lobbyist may have had with government officials, members of the immediate families of the officials, or businesses the officials have an interest in.

Legislative Unit Meals and Receptions: A regulated lobbyist who invites all members of a legislative unit (committee, delegation, caucus, etc.) to a meal or reception must (1) extend a written invitation to all members of the unit and (2) register the meal or reception with DLS on a form required by SEC at least five days before the date of the meal or reception. The registration report must include the date and location of the meal or reception and the name of each employee invited. Each week, DLS must publish a list containing the date and location of each upcoming meal or reception and the name of the legislative unit invited. DLS must allow public inspection of the report during regular business hours and maintain a photocopy or an electronic copy of each registration report filed.

A regulated lobbyist who is required to file a registration report must, within 14 days after the date of the meal or reception, file a report with SEC specifying (1) the total cost of the meal or reception; (2) the name of each sponsor who contributes to the cost; and (3) the amount of the contribution. If the required information is not known within the reporting time period, the regulated lobbyist must specify the nature of and estimate the amount of each item. If the required information is reported accurately and completely, the lobbyist is not required to include the cost of the meal or reception on the biannual lobbying activity report required by State law. SEC must allow public inspection of each registration report required during regular business hours.

Maryland General Assembly – Live Video Streaming

All floor and standing committee meetings in both the Senate and the House of Delegates are subject to the Open Meetings Act. Thus, they are open to the public and must be published in the General Assembly's meeting schedule. Live and archived video streaming is available for all standing committee meetings of the House of Delegates and the Senate. Standing committees do not currently stream video of voting sessions, however. In addition, while live and archived audio streaming is available for floor sessions of both chambers, neither chamber is equipped with video-streaming equipment. All live and archived video and audio are available on the General Assembly website.

Background: Since SEC was established in 1979, it has issued more than 500 advisory opinions. According to its 2015 annual report, the commission issued *informal advice* to employees and officials in approximately 500 instances in 2015, including advice on (1) lobbying registration, reporting, and conduct; (2) secondary employment; (3) procurement restrictions; (4) post-employment; and (5) gifts. The commission also reviews and approves county and municipal ethics laws enacted pursuant to the requirements of the Public Ethics Law.

[The 2016 Annual Report of the Open Meetings Law Compliance Board](#) reports that there were 41 complaints submitted during fiscal 2016 and the board issued 32 opinions in that

period. OAG provides the board with legal counsel and an administrator and posts OMCB’s opinions and other Open Meetings Act materials on its website. The University of Maryland’s Institute for Governmental Service and Research provides the online training class on the Open Meetings Act to the public at no charge. According to the institute, 271 users in 2016 initiated training on the online system and completed the course successfully.

State Expenditures:

Department of Legislative Services

DLS provides live and archived video of all standing committee hearings; however, the video is not closed-captioned. Standing committees do not currently stream video of voting sessions. In addition, while live and archived audio streaming is available for floor sessions of both chambers, neither chamber is equipped with video-streaming equipment. In 2015, floor sessions of both chambers totaled approximately 155 hours. Similarly, standing committee hearings averaged a total of 7,200 hours. Therefore, general fund expenditures for DLS increase by \$2,163,048 in fiscal 2018, which accounts for a 90-day start-up delay from the bill’s July 1, 2017 effective date. This estimate reflects the cost of (1) hiring four audiovisual technicians to operate video cameras and microphones in the two chambers and (2) providing closed-captioning for an estimated 8,000 hours of video, which factors in additional footage for voting sessions that are not currently video streamed. It includes salaries, fringe benefits, one-time start-up costs to add video-recording capability to the two chambers (including costs for microphones, video cameras, wiring, hardware, and installation), and ongoing operating costs. The estimate assumes that DLS can provide video streaming of standing committee voting sessions with existing resources, and that closed-captioning can be added to video after it is recorded at a rate of \$2 per minute.

Positions	4
Salaries and Fringe Benefits	\$282,613
Video Equipment and Installation	900,000
Closed Captioning	960,000
Other Operating Expenses	<u>20,435</u>
Total FY 2018 DLS Expenditures	\$2,163,048

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses but may vary depending on (1) the total hours of recorded video and (2) the specific features of the closed-captioning services obtained, including the turnaround time required.

State Ethics Commission

SEC advises that it can develop the executive employee meal and reception registration form with existing resources but that the bill's provisions that require SEC to publish and post the information from those forms on its website result in a one-time cost of \$20,000 in fiscal 2018 for software programming to integrate the new form into the existing electronic lobbyist reporting system. It is assumed that these expenses are charged to the Lobbyist Registration Fund.

Other Agencies

OAG and other State agencies can implement the bill with existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: HB 438 (The Speaker – By Request – Administration) – Health and Government Operations and Environment and Transportation.

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

Fiscal Note History: First Reader - March 2, 2017
fn/mcr

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Legislative Transparency Act of 2017

BILL NUMBER: SB253/HB438

PREPARED BY: GLO
(Dept./Agency/GLO)

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

OR

 WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS