

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 695

(Delegate Frick, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

Open Meetings Act - Closed Meetings - Cybersecurity

This bill authorizes a public body to meet in closed session to discuss cybersecurity, under the Open Meetings Act, if the public body determines that public discussion would constitute a risk to specified security assessments, deployments, or network security information.

Fiscal Summary

State Effect: None. The change is procedural in nature and does not directly affect State governmental finances.

Local Effect: None. The change is procedural in nature and does not directly affect local governmental finances.

Small Business Effect: None.

Analysis

Bill Summary: A public body may meet in closed session to discuss cybersecurity issues if the public body determines that public discussion would constitute a risk to:

- security assessments or deployments relating to information resources technology;
- network security information, including information that is (1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a governmental entity; (2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or (3) related to an assessment, made by or for a governmental entity or

- maintained by a governmental entity, of the vulnerability of a network to criminal activity; or
- deployments or implementation of security personnel, critical infrastructure, or security devices.

Current Law:

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, including whether any portion of the meeting will be in closed session 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.

Closed Sessions

Subject to specified limitations, a public body may meet in closed session or adjourn an open session to a closed session only to:

- protect the privacy or reputation of an individual with respect to a matter that is not related to public business;
- consult with counsel to obtain legal advice, or to consult with staff, consultants, or other individuals about pending or potential litigation;
- comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter;
- conduct collective bargaining;
- conduct investigative proceedings; or
- discuss or consider (1) personnel matters; (2) matters related to acquisition of real property; (3) business location or expansion; (4) investment of public funds and marketing of public securities; (5) contract awards and negotiations (6) activities regarding scholastic, licensing, or qualifying examinations; and (7) public security.

Background: According to the Congressional Research Service, cybersecurity is generally defined as the act of protecting information and communications technology systems and their contents from attack, disruption, or other threats and includes activities and other measures intended to protect:

- computers and computer networks;
- software and data; and
- related hardware and devices software and the information they contain and communicate.

Cybersecurity has become a major issue as threats to the State and local government technology infrastructure continue to grow. The Office of the Attorney General reported that in fiscal 2016 there were 564 reported data breaches affecting more than 600,000 Maryland residents, a 41% increase from the previous year.

Chapter 358 of 2015 established the Maryland Cybersecurity Council. The council is required to work with the National Institute of Standards and Technology (NIST), as well as other federal agencies, private-sector businesses, and private cybersecurity experts, to address State issues. The council's responsibilities include (1) examining inconsistencies between State and federal cybersecurity laws; (2) assisting private-sector cybersecurity businesses in adopting, adapting, and implementing the NIST cybersecurity framework of standards and practices; and (3) recommending legislative changes to address cybersecurity issues.

In 2016, the council finalized the State of Maryland Cyber Disruption Plan, which was developed to provide a coordinated response to a cyber attack. It describes the strategy to coordinate State-level operations to support local, State, and federal agencies in addressing potential or actual disruptions from a cyber attack.

In January 2017, Governor Hogan issued an executive order directing the Governor's Office of Homeland Security (OHS) to maintain and improve a cybersecurity plan for the State by coordinating with State government units, agencies, local governments, and other branches of State government as well as the private sector and academia. OHS must submit a draft cybersecurity plan to the Governor by May 31, 2018.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Information Technology; Maryland Association of Counties; Comptroller's Office; Governor's Office; Judiciary (Administrative Office of the Courts); Register of Wills; Maryland State Department of Education; University System of Maryland; Department of Budget and Management; Department of General Services; Department of Labor, Licensing, and Regulation; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Maryland Public Information Act Manual; Maryland Cybersecurity Council; Maryland Manual Online; Congressional Research Service; Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2018
md/mcr Third Reader - March 17, 2018

Analysis by: Michelle Davis

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