

Department of Legislative Services  
 Maryland General Assembly  
 2023 Session

FISCAL AND POLICY NOTE  
 Enrolled - Revised

Senate Bill 328

(Senator Hettleman)

Budget and Taxation

Appropriations

Board of Public Works Public Comment Act

This bill requires the Board of Public Works (BPW), for each meeting of the board held on or after October 1, 2024, to allow members of the public to electronically submit comments on agenda items. The bill’s public comment requirements also include any updates to the agenda of the board. The bill requires BPW to employ at least one more staff position than the number of positions authorized in fiscal 2023 to carry out the bill’s provisions. **The bill takes effect July 1, 2023.**

Fiscal Summary

**State Effect:** General fund expenditures increase by \$227,400 in FY 2024 for BPW to hire staff and incur one-time technology costs. General fund expenditures increase by \$92,200 in FY 2025 for ongoing staffing costs and annualization.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	227,400	92,200	96,300	100,600	105,900
Net Effect	(\$227,400)	(\$92,200)	(\$96,300)	(\$100,600)	(\$105,900)

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

**Local Effect:** None. The change does not directly affect local government finances.

**Small Business Effect:** None.

Analysis

**Bill Summary:** The public comments submitted under the bill’s provisions (or that are otherwise received by BPW by electronic or regular mail and relate to a board agenda item)

must (1) be included in each meeting packet prepared for members of BPW; (2) be posted online at least 24 hours in advance of the meeting, or as soon as practicable after the public comment is received; and (3) be retained online through BPW's public website.

Any BPW discussion items that are not subject for inclusion in a public agenda, as specified under existing provisions of the Open Meetings Act, are not subject to public comment as established under the bill.

**Current Law:** The State Finance and Procurement Article establishes that BPW may control procurements by units of the Executive Branch. To exercise that authority, it may set policy, adopt regulations, and establish internal operational procedures consistent with State procurement law. In general, procurement contracts valued at \$200,000 or more must be approved by BPW. Typically, the board meets every two weeks to consider contracts coming before it for review and approval.

### *Open Meetings Act, Generally*

Under Maryland's Open Meetings Act, with limited exceptions, a public body must (1) meet in open session in places reasonably accessible to potential attendees and (2) provide reasonable advance notice of the time and location of meetings, including, when appropriate, whether any portion of a meeting will be in closed session. 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.

Guidance provided by the Office of the Attorney General indicates that when the meeting "place" is a conference call, the public can be provided access through a call-in number or by access to a meeting room with a speakerphone.

### *Agendas*

Generally, a public body must make an agenda available to the public prior to meeting in an open session. The agenda must include known items of business or topics to be discussed at the meeting and indicate whether the public body expects to close any portion of the meeting in accordance with State law. The public body is not required to include in the agenda any information regarding the subject matter of a closed portion of the meeting. If a public body is unable to comply with specified deadlines for the release of a meeting

agenda because the meeting is scheduled in response to an emergency, a natural disaster, or any other unanticipated situation, the public body must make available, on request, an agenda of the meeting within a reasonable time after the meeting occurs.

### *Minutes*

As soon as practicable after an 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 a public body meets in closed session, the minutes for a public body's next open session must include a summary that includes specified information about the proceedings of the closed meeting. A public body need not 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 the public body votes on legislation and the individual votes taken by each participating member of the public body are promptly posted on the Internet.

In general, with limited exceptions, minutes of a public body must be available for public inspection during normal business hours. A public body must retain a copy of the minutes of each session and any specified recording for at least five years and, to the extent practicable, post them online.

**State Expenditures:** BPW advises that all correspondence (both electronic and regular) sent to the board from the public relating to an item appearing on the board's meeting agenda is both emailed to BPW members and saved in digital meeting recording files. However, correspondence is not currently posted online. BPW requires a new web portal to meet the bill's provisions related to posting public comments online. Consistent with the bill's explicit requirement, BPW also requires additional staff to meet the bill's requirements. The staffing requirement in the bill does not qualify as a mandated appropriation as a specific funding level cannot be directly ascertained from the bill's language.

Therefore, general fund expenditures increase by \$227,417 in fiscal 2024, which accounts for a 90-day start-up delay from the bill's July 1, 2023 effective date. This estimate reflects the cost of hiring one computer operator manager to oversee the administration of the electronically submitted public comments. It includes a salary, fringe benefits, one-time start-up costs (including a web portal to receive and store public comments), and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$70,008
One-time Information Technology Costs	150,000
Operating Expenses	<u>7,409</u>
<b>Total FY 2024 State Expenditures</b>	<b>\$227,417</b>

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

The Department of Legislative Services notes that the Department of Information Technology (DoIT) provides information technology services to BPW on a fee-for-service basis. Therefore, although DoIT likely administers the new portal, this analysis assumes that BPW bears the cost of operating it.

### **Additional Information**

**Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** HB 498 (Delegate Korman) - Appropriations.

**Information Source(s):** Department of Budget and Management; Board of Public Works; Department of Legislative Services

**Fiscal Note History:** First Reader - February 6, 2023  
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