

CCMD_Tierra Bradford_Fav_SB0590

Uploaded by: Bradford, Tierra

Position: FAV

February 13, 2020

Testimony on SB 590
Public Information Act - Revisions
Education, Health, and Environmental Affairs

Position: Favorable

Common Cause Maryland supports SB 590 which would build on the successful implementation of the Public Information Act (PIA) Compliance Board and the Ombudsman program as well as ensure the process for requesting records under the PIA is equitable.

Maryland citizens deserve access to information. They need fair and open access to data and public records concerning health, safety, natural resources, civil liberties and how government funds and subsidies are sent. While the General Assembly has taken important steps towards more open and accessible government, our current PIA dispute-resolution process leaves many requesters questioning the overall fairness and efficiency of the PIA.

Currently, the PIA Compliance Board has no jurisdiction to decide any disputes other than those involving fees greater than \$350 which are usually regarding fee waivers, repetitive requests, or exemptions. Requesters only option is to seek judicial remedy because there is no other process for obtaining a binding final decision on any PIA dispute outside of going to court. As can be expected, most infrequently use this process because they may be unable to cover the cost of legal fees.

SB 590 addresses this inequity by taking advantage of the Board that has been underutilized and expanding its jurisdiction while preserving the Ombudsman program. This would ensure all requesters who are unable to afford legal representation are provided with an alternative to resolving their disputes. The process is made even more accessible because the change would not require a complex process or hearing that may confuse requesters. Those requests unable to be resolved in mediation with the Ombudsman would be submitted to the Board who would be able to issue a binding decision.

SB 590 also lowers the current \$350 threshold to \$200, ensuring more disputes involving fees and the denial of fee waivers are able to be reviewed by the Board. This will allow the Board the opportunity to ensure that custodians are making the determination on an individualized, case-by-case basis. While the fee waiver process is still left at the discretion of the agency, many of which deny waivers with no discretion, we do believe this is a good starting point that begins to address the limited transparency available to low-income Marylanders. It also eliminates the process for judicial review of an agency's fee waiver decision which is inaccessible to a requester who is asking for a waiver.

SB 590 also requires regular reporting from agencies, ensuring that they are tracking requests as they receive them and as they are resolved. This will ensure future reports are able to provide a more robust review of the performance of the PIA. We note that agencies were not required to report, but have said that it is feasible for them to periodically report data on PIA caseloads.

The PIA Compliance Board and Ombudsman program play an integral role in ensuring government transparency which is vital to a healthy democracy. Expanding the Board's jurisdiction and ensuring they and the Ombudsman have access to information from agencies will improve the PIA process while ensuring requesters with limited means receive a more equitable treatment.

We urge a favorable report on SB 590.



AFSCME_Sue Esty_FAV_SB0590

Uploaded by: Esty, Sue

Position: FAV



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Patrick Moran - President

Testimony

SB 590 – Public Information Act – Revisions

AFSCME Council 3 supports SB 590. It would both strengthen and provide clarity to the priority of public access to governmental records. The bill would give the Public Information Compliance Board (PIACB), greater collective knowledge through its new membership requirements, and greater enforcement ability. It would require agencies to more publicly provide their PIA policies and would provide greater transparency as a result of the bills reporting mechanism.

This legislation reflects issues raised in a report from the Office of the Attorney General which was required in last year's Joint Chairmen's Report. By expanding the role of the PIACB to include not just issues related to feeds, but also to include review of decisions by the Ombudsman, the bill would strengthen the process and its oversight.

This legislation will help guarantee transparency and oversight. For these reasons, we urge a favorable report.

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Public Justice Center Favorable SB 590

Uploaded by: gardner, deb

Position: FAV



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SB 590

Public Information Act – Revisions

**Hearing before the Education, Health & Environmental Matters Committee
February 13, 2020**

Position: FAVORABLE

SB 590 represents a significant advance in improving Maryland’s Public Information Act (PIA). As reflected in the recent report of the Public Access Ombud and the PIA Compliance Board (Report), to fulfill the promise of 2015 reforms, there is a significant need to make access to dispute resolution under the Act more accessible, faster, and less expensive for both applicants for public records and for governmental entity custodians.

SB 590’s expansion of the Compliance Board’s jurisdiction will do just that. It will provide user- friendly access to both mediation with the Ombud and immediate recourse to the Board where mediation was unsuccessful. This reform will open access to public records to many in Maryland who are currently blocked from pursuing their rights to public records. Under the current law, as well documented by the Report, all too often government entities in Maryland continue to deny requests that should be granted (at least in part), or worse, ignore valid requests altogether. Applicants for public records have no effective remedy if the government entity refuses to participate in mediation and the applicant cannot afford to hire a lawyer and take the agency to court. SB 590 incentivizes meaningful mediation and provides effective remedies for both sides through the Compliance Board, consistent with the purpose of the PIA.

Yet any party dissatisfied with a Board decision may still appeal to the circuit court and obtain a final, judicial determination. Moreover, a Board decision is automatically stayed when such an appeal is filed. As amended by SB 590, Maryland’s PIA will provide maximum access and flexibility to all interested parties.

The Public Justice Center is a 501(c)(3) charitable organization and as such does not endorse or oppose any political party or candidate for elected office.

SB 590 is necessary to change the culture of compliance with the PIA from essentially optional (Report at 5) to mandatory, as this body intended. The PJC urges a FAVORABLE REPORT on SB 590. If you have any questions, please feel free to contact Debra Gardner, Legal Director, gardnerd@publicjustice.org, 410-625-9409 x228.

David Plymyer_FAV_SB590

Uploaded by: Plymyer, David

Position: FAV

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February 7, 2020

TESTIMONY IN SUPPORT OF SB 590
Education, Health and Environmental Affairs
February 13, 2020

Dear Chair Pinsky & Members of the Committee:

I urge a favorable report on SB 590. It is, in my opinion, one of the most important “good government” bills to be considered by the General Assembly in years.

My opinion is based on experience both inside and outside local government. I retired as Anne Arundel County Attorney in 2014 after 31 years in the county office of year, preceded by five years as an Assistant State’s Attorney for Anne Arundel County.

Since retiring I have written extensively about local and state government, focusing on those issues involving transparency and accountability. In fact, I wrote an op-ed published by the *Baltimore Sun* in November praising the report by the MPIA Ombudsman and Compliance Board on which this bill is based. <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-1114-pia-changes-20191113-pqyzhgdsprczrkwuox7ymwrjem-story.html>

The proposal to establish an administrative remedy for resolving disputes over access to public records is long overdue, and it makes absolute sense to give that role to the Compliance Board. The body of law on interpretation of the MPIA is relatively small and lends itself perfectly to resolution by an administrative panel.

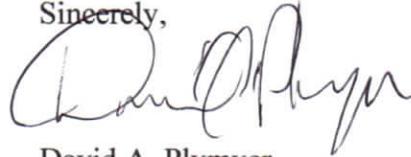
Not only will there be a tremendous savings in time and money to applicants and custodians, over time there will be a collection of reported decisions by the board to guide applicants and custodians. And I believe that administrative dispute resolution will curtail the too-common practice by some agencies of denying meritorious applications in the knowledge that few applicants can afford to go to court to compel compliance.

The record keeping and reporting requirements of the bill are indispensable to accountability. ***I admit that it took me awhile during my career in local government before I recognized that openness and transparency are not secondary concerns or nuisances, they are one of its core responsibilities. Without open and transparency there is no accountability, and without accountability government can do almost as much harm as good. Openness and transparency must be regarded as an essential part of the system of check and balances on governmental power.***

It is no secret that Maryland has struggled with controlling corruption within state and local government, and I don't believe that it is a coincidence that Maryland has lagged behind in the strength of its laws requiring openness and transparency. The observation by former Supreme Court Justice Louis Brandeis that "sunlight is the best disinfectant" may have become a cliché, but it is one that contains a great deal of truth.

SB 590 is a major step in the right direction, a credit to its sponsors. Thank you for considering my comments, and for your service to the citizens of Maryland.

Sincerely,

A handwritten signature in black ink, appearing to read "David A. Plymyer". The signature is fluid and cursive, with the first name "David" being the most prominent.

David A. Plymyer

William Poole_FAV_SB 590

Uploaded by: Poole, William

Position: FAV

TESTIMONY IN SUPPORT OF SB 590
Education, Health and Environmental Affairs, February 13, 2020

William Poole

William Poole is Distinguished Senior Scholar at the Mises Institute, Distinguished Scholar in Residence at the University of Delaware and Senior Advisor to Merk Investments. He retired as President and CEO of the Federal Reserve Bank of St. Louis in March 2008. He resides at 20 Osprey Way, Elkton, MD 21921. (A one-page bio is attached at the end of this testimony. Contact information follows.)

I fully support passage of SB 590. After my bullet points, I will outline my background that justifies my rendering an opinion on this proposed legislation. Additional paragraphs then explain my reasoning.

I have two principal points:

- The Public Information Act (PIA) is not working as well as it should because there is no effective enforcement mechanism. For that reason, where the Act is most needed it may be least effective. Maryland government needs citizen input that may at times come through document demands that expose improper activities by state agencies.
- To use management lingo, the PIA is a management “control” to assure effective performance by Maryland agencies. To understand the importance of effective controls, consider the disastrous failure of another control—the audit reviews by the Office of Legislative Audits. The OLA did its job when it issued adverse audit findings on the information security systems and practices of the State Department of Assessments and Taxation (SDAT) in 2007, 2010, 2013 and 2018. Repeat findings are a huge red flag. SDAT concurred each time but did not do enough fast enough to strengthen its IT security. Thus, SDAT’s systems came down in the Baltimore ransomware attack last year. This is the type of risk that arises from inadequate enforcement of OLA findings. OLA can do its job but if the Legislature fails to compel agencies to reform their practices the OLA effort will not succeed.

If the Legislature endorses posting of speed-limit signs but fails to provide for state troopers and radar detectors, then speed limits will not be effective. It is just that simple.

The OLA Hotline is another important control. OLA’s 2019 Hotline report says that call volume in 2018 was 455. Another control works through Maryland Whistleblower laws. In my testimony, I concentrate on the Public Information Act and refer to experience with the Office of Legislative Audit to illustrate the consequences of an inadequate enforcement mechanism. This general point applies to all controls.

My ten years as President and CEO of the Federal Reserve Bank of St. Louis gave me extensive experience in management of a complex organization. During my time in office—1998-2008—the bank had about 1,200 employees. The Federal Reserve System had roughly 22,000 employees at that time. I had policy responsibilities as a member of the Federal Open Market Committee, the Fed’s primary monetary policy body. It was important that I collect as much relevant information as I could and make sound decisions based on that information, monetary theory and empirical work in macroeconomics. I made frequent speeches in my district and beyond, always listening

to gather and convey information. During my tenure, I sat on a Fed committee that had system-wide managerial responsibilities—the Information Technology Oversight Committee (ITOC)—and I was chairman of that committee for several years.

Many decades ago, most complex organizations established a management framework that relied importantly on an internal audit function. In the corporate world shareholders also came to rely on an external audit firm to study a company's financial accounts and certify that the accounts accurately reflected accepted accounting principles. In this testimony, I concentrate on the internal audit function.

In 1921, Congress established the General Accounting Office, which is now called the General Accountability Office. In Maryland, the corresponding entity is called the Office of Legislative Audits (OLA); its history can be traced back to 1906.

In the business world, customers certainly do file complaints but mostly they simply move their business to another competing firm. Citizens do not have that opportunity with regard to government services they believe to be substandard or abusive. A citizen who files a complaint with an agency is often ignored. Filing a suit in court is rarely helpful because of the doctrine of sovereign immunity. Complaining to your representative in the Assembly might help, or might not. If the abuse is serious enough and you can attract the attention of a journalist, you might be able to create enough of a stink that something is done.

Because the mechanisms of accountability at the federal level were not functioning sufficiently well, in 1946 Congress passed the Freedom of Information Act. Maryland's version is the Public Information Act (PIA), passed in 1970. These acts permit citizens to require disclosure and it is sometimes the case that disclosure is enough to force agencies to change their decisions or practices.

At both the federal and state level, we have learned that FOIA and PIA do not enforce themselves. If an agency declines to produce requested documents, then in most cases it can wait until the requester abandons the effort to obtain documents. That is a fact the Legislature must face if it is serious about the policy specified in the PIA. The goals are noble; the practice does not live up to that standard. That is what SB 590 is about.

In the private sector, as I observed at the St. Louis Fed, there is a robust mechanism to force compliance with controls. The bank's lawyers would force compliance with a FOIA demand by collecting the requested documents themselves or developing the legal case for not complying. In turn, the lawyers know that they are subject to audit by the bank's internal audit department.

It is important to understand that the internal audit department reports directly to a private firm's board of directors and not through the CEO. This arrangement is parallel to the one in Maryland. The Office of Legislative Audits reports directly to the Legislature's Joint Audit Committee and not through the governor. This arrangement is parallel to the typical one in the private sector in which a firm's audit department reports to the audit committee of the board of directors.

As CEO I was responsible for the management of the bank. I always thought of internal audit as my friend. I did not want the risk that our computer systems might be compromised, for example, and can assure you that I had to deal with adverse audit findings more than once. Our auditors uncovered problems, reported to the audit committee of the board and the board insisted that I fix the problems. The board never

had to twist my arm because I trusted internal audit, understood its conclusions, and had an intense personal interest in seeing that the bank was well run.

I exercised authority through the first vice president, who was the bank's chief operating officer (COO), and the senior vice presidents who had the direct managerial responsibility. The point that must be emphasized is that FOIA, internal audit structures and other controls do not enforce themselves.

HB 502 is important because it is an effort to develop a genuine and practical enforcement mechanism to respect the principles of the PIA. If the Legislature is serious about government in the sunshine, this bill should pass readily.

Let me illustrate the importance of enforcement by referring to the experience of Maryland's OLA in attempting to improve information security. OLA issued an audit finding in 2007 that the State Department of Assessments and Taxation needed to improve its information security efforts. SDAT agreed. In 2010, OLA issued a repeat finding to SDAT on the same issue and SDAT again agreed. In 2013, another OLA finding in an audit of SDAT: "Malware protection on DAT workstations and servers need improvement." SDAT concurred. October 2018: "Finding 8. IDPS [Intrusion Detection and Prevention Systems] protection did not exist for untrusted traffic entering the DAT network and numerous DAT workstations were running an outdated and unsupported operating system. SDAT agrees with the finding; corrective action is in progress."

Let me be blunt. The only reason that OLA had to issue one warning after another is that the Legislature did not pay enough attention to OLA's findings and did not force SDAT to fix the vulnerabilities immediately.

The Baltimore ransomware attack demonstrates vividly that SDAT did not act with sufficient urgency to separate its computer applications from those operated by the City of Baltimore. This is not a partisan issue. Multiple applications can run on the same computer if configured correctly.

Does anyone know which door was left open for the malware attack on Baltimore last year? What we do know is that real-estate transactions stopped because SDAT, it would seem obvious to this observer, had not adequately protected its computer system despite repeated adverse audit findings. I hope this incident is etched into the Legislature's collective brain. It is a dramatic example of failure to pay enough attention to OLA findings and force the operating department to respect those findings: NOW, not later.

If citizens find major abuses, make document demands that are ignored, the outcome could be as costly as the ransomware attack. That is why SB 590 is needed, and urgently.

William Poole

William Poole is Distinguished Senior Scholar at the Mises Institute, Distinguished Scholar in Residence at the University of Delaware and Senior Advisor to Merk Investments.

Poole retired as President and CEO of the Federal Reserve Bank of St. Louis in March 2008. In that position, which he held from March 1998, he served on the Federal Reserve's main monetary policy body, the Federal Open Market Committee. During his ten years at the St. Louis Fed, he presented over 150 speeches on a wide variety of economic and finance topics. Working with his Research Director, Robert Rasche, he did pioneering research on the forecasting accuracy of the federal funds futures market.

Before joining the St. Louis Fed, Poole was Herbert H. Goldberger Professor of Economics at Brown University. He served on the Brown faculty from 1974 to 1998 and the faculty of The Johns Hopkins University from 1963 to 1969. Between these two university positions, he was senior economist at the Board of Governors of the Federal Reserve System in Washington. He held a Presidential appointment as a member of the Council of Economic Advisers in the first Reagan administration, from 1982 to 1985.

Swarthmore College awarded Poole his AB degree in 1959, with High Honors. He received his MBA and Ph.D. degrees from the University of Chicago in 1963 and 1966, respectively. Swarthmore honored him with the Doctor of Laws degree in 1989. He was inducted into The Johns Hopkins Society of Scholars in 2005 and presented with the Adam Smith Award by the National Association for Business Economics in 2006. In 2007, the Global Interdependence Center presented him its Frederick Heldring Award.

Poole has engaged in a wide range of professional activities, including publishing numerous papers in professional journals. He has published two books, *Money and the Economy: A Monetarist View*, in 1978, and *Principles of Economics*, in 1991. In 1980-81, he was a visiting economist at the Reserve Bank of Australia and in 1991, Bank Mees and Hope Visiting Professor of Economics at Erasmus University in Rotterdam. At various times, he served on advisory boards of the Federal Reserve Banks of Boston and New York, and the Congressional Budget Office. He was a senior fellow, Cato Institute, 2008-18.

Poole appears often on the speaking circuit and is well known for his commentary on current economic and financial developments. Recently, on September 14, 2018, he presented a paper, "Before Lehman," at a conference on the Financial Crisis held at the American Enterprise Institute. (A video is available on C-Span 2.)

He is a member of the American Economic Association and the National Association for Business Economics.

Poole was born and raised in Wilmington, Delaware. He has four sons.

Contact Information

If my testimony is reproduced for distribution beyond the legislature, I request that my contact information not be included. That will avoid adding to my already heavy load of spam email and robo calls.

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Sen. Kagn SB590_ PIA - Testimony

Uploaded by: Senator Kagan, Senator Kagan

Position: FAV

CHERYL C. KAGAN
Legislative District 17
Montgomery County

Vice Chair
Education, Health, and
Environmental Affairs Committee

Joint Audit Committee
Joint Committee on Federal Relations



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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

SB590: Public Information Act - Revisions
Senate Education, Health and Environmental Affairs Committee
Thursday, February 13, 2020, 1:00 PM

Five years ago, the Public Information Act (PIA) Compliance Board and the office of the Public Access Ombudsman were established to ensure sound management of requests for information on state government activities and decisions. This bill would help the Board and the Ombudsman perform their duties better by enacting recommendations outlined in their *Final Report on the Public Information Act*.

The Board is an independent, five-member body tasked with deciding certain fee disputes under the Public Information Act. The Ombudsman is an independent office that seeks to resolve PIA disputes on a voluntary basis so as to reduce disputes that end up in the courts. Both the Ombudsman and Board are supported by the Office of the Attorney General.

Last April, the Board and the Ombudsman were asked to collect data from State agencies concerning their PIA caseloads and practices and make recommendations relating to PIA management. Their findings indicated that the 2015 authorization for these entities produced disproportionate caseloads (the Ombudsman has handled 903 cases and the Board has handled only 31 in a 15-month span) and created a dynamic that is leading many requestors with no alternative to a court case.

SB590 would implement the *Final Report on the Public Information Act's* recommendations. The Board would be authorized to review and decide certain disputes that go unresolved by the Public Access Ombudsman. Additionally, it would expand the Board's jurisdiction to waive or reduce various fees. The bill would also instruct custodians to post an annual report on the number of requests received, fulfilled, and denied. It would also set a staffing level minimum of four employees to support the Board and the office of the Public Access Ombudsman.

Implementing these changes would ensure that everyone has access to public information. Going to court is costly, time-consuming, and complicated for most people. Requestors should have an effective and efficient way to resolve disputes.

I urge a favorable report on SB590.

Joanne Simpson_FAV_SB590

Uploaded by: Simpson, Joanne

Position: FAV

Clark, Janice

From: Joanne C. Simpson <writerjcs@gmail.com>
Sent: Friday, February 7, 2020 10:38 AM
To: cheryl.kagan@senate.state.md.us; Clark, Janice; OAG; Kershner, Lisa; Joanne Cavanaugh Simpson
Subject: Please support MPIA via HB 502/SB 590 Bill to Expand PIACB Authority

TESTIMONY IN SUPPORT OF SB 590
Education, Health and Environmental Affairs, February 13, 2020

From: Joanne C. Simpson, freelance journalist to various local publications in the Baltimore region, writerjcs@gmail.com; 410-821-9592

Dear Senator Cheryl Kagan, Senator Clarence K. Lam and fellow Senators on the Education, Health and Environmental Affairs Committee:

I am writing to urge you to support the bill HB 502/SB 590 to expand the authority of the PIACB in order to ensure compliance with the Maryland Public Information Act (MPIA). I have found in my work as a freelance journalist for local publications that simple compliance with the MPIA is severely lacking in our state, with resistance to records inspection (Baltimore County Public Schools); months-long delays and obfuscation; and exorbitant and unreasonable costs for record searches and copies. And, in the case of the Baltimore City Police Department, I have seen requests for public records, filled with few problems by other departments elsewhere in the state, go wholly unanswered by BCPD, with no replies whatsoever.

Unfortunately, these public entities know there are few to no actual repercussions for lack of compliance. Thus, the true intent of the MPIA -- to protect citizens' right to know and have access to public records -- is practically null and void for those who refuse such compliance. Please support this bill in committee so that it can move forward. It is essential that a custodian of records "may not fail to respond to a request" under the bill's parameters, and that PIACB jurisdiction is expanded overall, allowing the board to decide PIA disputes not resolved under the current voluntary basis through the state's Ombudsman program.

My very best,

Joanne
C. Simpson
410-821-9592

MDDC FAVORABLE SB 590

Uploaded by: snyder, rebecca

Position: FAV



Maryland | Delaware | DC Press Association

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To: Education, Health & Environmental Affairs Committee

From: Rebecca Snyder, Executive Director, MDDC Press Association

Date: February 13, 2020

Re: **SB 590 – Support**

The Maryland-Delaware-District of Columbia Press Association represents a diverse membership of media organizations, from large metro dailies such as the Washington Post and the Baltimore Sun, to publications such as The Daily Record and online only outlets such as Maryland Matters and Baltimore Brew.

The press works to shine light and share information on topics that affect us all. By accessing available public information, journalists are able to provide people data points to help them make more informed decisions. Information under the PIA belongs to all of us. There is a side of the story that doesn't get told if public information is withheld. Journalists connect the dots in their storytelling and help readers better understand a topic.

The bill builds on the successful implementation of the Public Information Act Compliance Board and the Ombudsman programs begun in 2015. It provides the PIA Compliance Board with comprehensive jurisdiction to review and decide PIA disputes that are not resolved through mediation with the Ombudsman. The bill also requires custodians to adopt a policy of proactive records disclosure, and to annually track and report information about their PIA requests and responses.

This proposed legislation—especially the provisions expanding the Board's jurisdiction—would implement the primary recommendations in the Ombudsman and Board's recently published Final Report on the Public Information Act (<https://news.maryland.gov/mpiaombuds/wp-content/uploads/sites/20/2019/12/Final-Report-on-the-PIA-12.27.19.pdf>). As stated in the Report, providing the Board with comprehensive jurisdiction in this way is expected to improve the PIA dispute-resolution process by both enhancing the Ombudsman's mediation program, and by providing an accessible administrative process for reviewing and deciding matters that can't be solved through mediation alone.

FACTS

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Specifically, the bill:

- Increases the topical jurisdiction of the Board's review and issued opinions to include denials of inspection, fee waivers and timely response and lowers the floor for fee disputes from \$350 to \$200. The Board will continue to issue written opinions, which have been helpful in clarifying the law.
- Authorizes the Board to order the custodian to rectify violations, including waiving fees, adjusting costs of producing records and producing records for inspection. Only matters that have been offered mediation through the Ombudsman's office will be considered by the Board. Additionally, custodians who allege an applicant's pattern of requests are frivolous, vexatious or in bad faith, may petition the Board to review the requests and issue a written opinion potentially authorizing the custodian to ignore the request or respond to a less burdensome version of the request.
- Requires proactive disclosure of public records to save custodians time and effort in fulfilling commonly-requested items and an annual report on the requests received, fulfilled and denied during the calendar year.
- Adjusts the expertise of the members of the Public Information Act Compliance Board to include two members that are attorneys admitted to the Maryland Bar (statute currently requires one) and one who is knowledgeable about electronic records and technology.
- Increases staffing to four staff members to support the board and the office of the Public Access Ombudsman (currently, staffing levels are unspecified)

I hear regularly from members about PIA problems. For some journalists, PIA requests are ignored or information clearly available under the PIA is denied. For others, exorbitant fees and uneven waivers make accessing the records difficult, if not impossible. Under current PIA law, there is no recourse other than the courts if there is a dispute over a denial or an overbroad exemption. The reforms of 2015 brought positive change to the PIA, in the form of the Ombudsman and the PIA Compliance Board. We believe it is time to enhance the jurisdiction of the PIA Compliance Board to create a stronger body of precedent through its opinions and to provide more clarity to both requestors and custodians about the application of the law.

We also applaud the enforcement mechanism in the bill which would prohibit the charging of fees for a records request if the custodian does not meet the deadlines for response. This means that if a custodian does not produce records within 30 days or ask for an extension within the allotted time period, they will not be able to charge for the records. We hope this will incentivize custodians to prioritize records management and PIA requests.

The Press Association encourages a favorable report on SB 590.

MDOG FAVORABLE_SB 590

Uploaded by: snyder, rebecca

Position: FAV

Advocating for Marylanders' fair and open access to government-funded data and information

ORGANIZATIONS URGE CRITICAL UPDATE OF MARYLAND'S PUBLIC INFORMATION ACT

To: Education, Health & Environmental Affairs Committee

Date: February 13, 2020

Re: **SB 590 – Maryland Public Information Act – Revisions**

Position: **Support**

Maryland's records, like the government that creates and files them, belong to the public, along with most of the information they contain.

The organizations listed on the back of this page respectfully request a favorable report on SB 590. We have diverse missions and policy priorities, but we all agree that Marylanders should have air and open access to data, information and public records concerning health, safety, natural resources, civil liberties and how government funds and subsidies are spent. Our abilities to advocate in the public interest are predicated on a fair application of the Maryland Public Information Act (MPIA).

The 2015 reforms to the MPIA law were an important step forward, coming 45 years after the law was first enacted. This bill builds on the successful implementation of the Public Information Act Compliance Board and the Ombudsman programs begun in 2015. It provides the PIA Compliance Board with comprehensive jurisdiction to review and decide PIA disputes that are not resolved through mediation with the Ombudsman. The bill also requires custodians to adopt a policy of proactive records disclosure, and to annually track and report information about their PIA requests and responses.

This proposed legislation—especially the provisions expanding the Board's jurisdiction—would implement the primary recommendations in the Ombudsman and Board's recently published [Final Report on the Public Information Act](https://news.maryland.gov/mpiaombuds/wp-content/uploads/sites/20/2019/12/Final-Report-on-the-PIA-12.27.19.pdf) (https://news.maryland.gov/mpiaombuds/wp-content/uploads/sites/20/2019/12/Final-Report-on-the-PIA-12.27.19.pdf). As stated in the Report, providing the Board with comprehensive jurisdiction in this way is expected to improve the PIA dispute-resolution process by both enhancing the Ombudsman's mediation program, and by providing an accessible administrative process for reviewing and deciding matters that can't be solved through mediation alone.

We respectfully request that you support these critical reforms and issue a favorable report.



Marylanders for Open Government a network of diverse organizations connected by an interest in demanding fair and open access to government-funded data and information. Members of the network include environmental and public health groups, good government groups, consumer advocates and social justice organizations. More information and a list of members can be found at www.MdOpenGov.org



ACLU_Spielberger_FAV_SB0590

Uploaded by: Spielberg, Joe

Position: FAV



**Testimony for the Senate Education, Health, and Environmental
Affairs Committee
February 13, 2020**

SB 590 – Public Information Act – Revisions

JOSEPH SPIELBERGER
PUBLIC POLICY COUNSEL

FAVORABLE

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OFFICERS AND DIRECTORS
JOHN HENDERSON
PRESIDENT

The ACLU of Maryland supports SB 590, which would strengthen Maryland’s Public Information Act (“PIA”) and codify into law the main recommendations from the PIA Compliance Board and Public Access Ombudsman’s 2019 report.¹

In particular, this bill would advance a policy of proactive disclosure by:

- expanding the PIA Board’s jurisdiction,
- issuing new guidance and reporting requirements for agency custodians, and
- improving timeliness, efficiency, and transparency in records requests.

In doing so, this bill underscores that the PIA is grounded in the principle that “Government of the people, by the people, and for the people must be open to the people.”²

The ACLU of Maryland believes strongly in open and transparent government, because a true democracy demands it. The PIA is a necessary tool for Marylanders to provide checks and balances on elected officials and government agencies. Filing PIA requests and obtaining information is a meaningful step toward keeping our government accountable. When this avenue becomes unavailable, it undermines confidence in fair government and prevents individuals from engaging in meaningful and informed debate about matters of public interest.

Our organization’s intake department has taken calls and requests for assistance from residents across the state who face barriers accessing public information, whether due to agency mismanagement, confusion, miscommunication, or unwillingness to help.

¹ State of Maryland Public Information Act Compliance Board, and Office of the Public Access Ombudsman, *Final Report on the Public Information Act*, December 27, 2019, available at:

<https://news.maryland.gov/mpiaombuds/wp-content/uploads/sites/20/2019/12/Final-Report-on-the-PIA-12.27.19.pdf>

² Office of the Attorney General, *Maryland Public Information Act Manual*, 14th Ed. (2015).



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Maryland

Some recent examples include:

- A man sought dash camera video of his police encounter; he got one response stating the video was available for a \$15 fee, and another denying the request because all dash cameras were inoperable.
- A man incarcerated in Alleghany County had his fee waiver denied despite indigency, and was charged \$509 for records from his own facility.
- A Baltimore City woman sought public records regarding her son's fatal vehicle collision but was unable to obtain forms and received no help or guidance from the State's Attorney's Office.
- A Harford County man's request for records to reveal government misconduct in taxation were denied because the custodian considered his request "questions" instead of specific record requests.
- Bethesda parents sought records to bolster their case to improve an intersection adjacent to the local high school to prevent vehicle collisions, but multiple requests were denied.

Regardless of whether these cases were handled properly, it is clear state agencies need better guidance, systems, and accountability.

The underlying principle of the PIA is "All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees [and the Act] shall be construed in favor of allowing inspection of a public record, with the least cost and least delay."³

Marylanders must have reliable access to information about how state agencies are responding to their individual cases, and acting on matters of public interest. Excessive fees contribute to an inequitable system in which the right to petition is only available to those with means. By codifying the PIA Ombudsman's main recommendations that were based on extensive research, data analysis, interviews, and recognized best practices, SB 590 will help ensure that the PIA is implemented consistently with its original intent, and that Maryland state government remains of the people, by the people, for the people, and open to the people.

For the foregoing reasons, we urge a favorable report on SB 590.

³ GP § 4-103(a)-(b).

Ellen M. Zavian_FAV_SB590

Uploaded by: Zavian, Ellen

Position: FAV

LETTERHEAD IF APPROPRIATE

TESTIMONY IN SUPPORT OF SB 590
February 13, 2020
Education, Health, and Environmental Affairs Committee

Dear Chair Pinsky, Vice-Chair Kagan, & Members of the Committees:

As a member of the Safe Tech Subcommittee of Montgomery County PTA's Health and Safety Committee, I ask for many tech vendor contracts, reports on data breaches, reviews of technology breaches, etc... MCPS fails to follow-through on some of these requests and they believe we have no recourse but to keep asking, over and over again.

While the Public Access Obudsperson you have appointed has made a big difference over the past couple years, the office needs additional tools to help the public.

Thank you for helping parents who are trying to protect our children from the Google-esque type companies that are collecting and selling our children's data by giving us the needed documents to give our youth the privacy they so deserve.

This can only be accomplished by transparency of documents...which this Bill will aid in obtaining such needed documents!

Parents do not have the money and time to keep filing complaints to enforce the current law and the Board has the expertise to understand the requests and apply some common sense to our requests. Please consider this commonsense approach.

.

I ask for a favorable report on SB 590.

Sincerely,

Ellen M. Zavian, Esquire
Parent – MC

BCA_SB590_FWA

Uploaded by: Blendy, Nicholas

Position: FWA



BERNARD C. "JACK" YOUNG

MAYOR

*Office of Government Relations
88 State Circle
Annapolis, Maryland 21401*

SB 590

February 13, 2020

TO: Members of the Senate Education, Health and Environmental Affairs Committee

FROM: Nicholas Blendy, Deputy Director of Government Relations

RE: Senate Bill 590 - Public Information Act - Revisions

POSITION: FAVORABLE WITH AMENDMENTS

Chair Pinsky, Vice-Chair Kagan, and Members of the Committee, please be advised that the Baltimore City Administration **supports with amendments** Senate Bill (SB) 590.

As written, SB 590 would effectively remove meaningful judicial review of disputes under Maryland's Public Information Act ("PIA") by providing in Bill Section 4-1A-04(a)(3)(I) that the PIA Compliance Board can order production of a government record with no ability to challenge that order. The bill should be amended to clarify that a record custodian can either comply with that order or seek judicial review of it in Circuit Court. Otherwise, the government would be forced to disclose a record prior to challenging the disclosure in Circuit Court, thereby making the PIA Compliance Board the only forum for PIA disputes. While such an administrative forum works in the context of the Open Meetings Compliance Board that does not find facts, the PIA Compliance Board would be tasked with applying the law to the records at issue in each request, without any rules of evidence, ability to compel testimony or the safeguards of *in camera* inspection. The requested amendment would allow disputes that require judicial review to meaningfully receive it.

Section 4-1A-06(b)(4) provides that the PIA Compliance Board will keep confidential only those records or information "that is not a public record." Since every record about government operations is considered a public record under PIA Section 4-101, the confidentiality provided by this bill is ineffective. The Bill should be amended to clarify that any records or information provided to the PIA Compliance Board will be kept confidential. It should also be amended to provide that the records of the Ombudsman and the PIA Compliance Board are not themselves subject to disclosure under the Public Information Act.

Similarly, an amendment is needed to Bill Section 4-1B-04(d)(2) so that it is clear that the records disclosed to the Ombudsman and the PIA Compliance Board that are to be shared with others in the Attorney General's Office are confidential under Bill Section 4-1A-06(b)(4) and not subject to

disclosure in response to a PIA request to the Attorney General's Office. It should also be noted that governments will not be able to share with the Attorney General, the PIA Compliance Board or the Ombudsman any records that are required to be kept confidential by operation of federal laws that do not recognize the state government as a permissible recipient of the record. *See, e.g.*, 20 U.S.C. 1230(j)(1)(Federal Family Educational and Privacy Rights Act requires Attorneys General of states to apply to a "court of competent jurisdiction" to permit access to educational records).

An amendment is also suggested for Bill Section 4-1A-06(b)(3), which mandates that a government or requestor give an affidavit setting forth "a statement of facts that are at issue in the complaint." Such an affidavit becomes a statement of a party opponent under Maryland Rule of Evidence 8-502.1. While this may appear to give the PIA Compliance Board the ability to evaluate testimony, it lacks any of the other safeguards present in the Maryland Rules. The PIA Compliance Board would not be able to evaluate the relevancy or completeness of such an affidavit, nor would the other party in the dispute be able to cross-examine the affiant. It is unclear what government agency or employee would be required to give the affidavit as the Maryland Rules' provisions on corporate designees would not apply. In short, this type of testimony is properly handled in Circuit Court and the Bill should be amended to remove the requirement that affidavits be provided.

Additionally, the bill gives sweeping regulatory power to the PIA Compliance Board by allowing it to enact regulations for the entirety of Title 4, which includes all PIA exemptions. This makes the PIA Compliance Board the judiciary, allowing it to opine on the proper interpretation of every exemption. One need only look at the volume of cases handled by the Federal District Courts concerning the Federal Freedom of Information Act to realize that regulations on these exemptions would be inappropriate if not impossible. The bill should be amended to clarify that the PIA Compliance Board's regulatory power is over Subtitles 1a and 1b of Title 4 that deal with the PIA Compliance Board and the Ombudsman, respectively, thereby allowing for regulations over the process of dispute resolution and other matters within their control, not the scope or interpretation of the exemptions, which are the proper providence of the legislative or judicial branches of government.

The bill should be amended to clarify the meaning of "unreasonable failure to waive a fee" in Bill Section 4-1A-04(a)(3)(III) to give governments guidance on what kind of requests for fee waivers would be reviewable by the PIA Compliance Board. As written the bill deletes the brackets around the words "order the custodian to" in that same Section, which effectively eviscerates this provision because the Compliance Board was not the entity that charged the fee in the first instance. The language in the brackets should be retained in order to give the Board power to order a fee reduction. An amendment would also be helpful to clarify that "failure to respond to a request" in Bill Section 4-1A-06(b)(2)(I) captures only those requests where the government has failed to send the required initial 10-day letter.

Finally, the bill should remove the ability of the PIA Compliance Board to prevent a government from charging a fee if the response to a request is deemed late. The more voluminous a request, the more time it takes to search for and compile the records making it more likely a record custodian may be a few days late in its response. The bill could be clarified to provide that the fee be eliminated only in the situation that the government failed to send any documents within 30 days.

We respectfully request a **favorable with amendments** report on Senate Bill 590.

MaCo_Alex Butler_FWA_SB0590

Uploaded by: Butler, Alex

Position: FWA



Senate Bill 590

Public Information Act – Revisions

MACo Position: **SUPPORT**
WITH AMENDMENTS

To: Education, Health & Environmental
Affairs Committee

Date: February 13, 2020

From: Alex Butler

The Maryland Association of Counties (MACo) **SUPPORTS SB 590 WITH AMENDMENTS**. While MACo and the counties are generally supportive of the state laws ensuring public access to documents and information, there are aspects of the bill that pose serious legal, implementation, and cost challenges that deserve careful consideration and revision. It is also worth noting that the survey that gave rise to the recommendations in this bill only interviewed State record custodians and did not include any local government agencies.

MACo's primary concern over the bill relates to the provisions giving the Public Information Act Compliance Board (Board) new authority to review record denials and compel disclosure. Currently, challenges to record denials are properly heard by the Circuit Court, where a judge can conduct an *in camera* (private) review of the records in question to determine whether their release was valid. This protects counties from liability concerns, particularly for mandatory denials.

However, neither the Board nor the Attorney General's Office carry the same legal weight and protections afforded by formal judicial review. **MACo urges the records denial portion of the bill be struck or, in the alternative, a formal Administrative Court process be established.** MACo's other amendments are largely technical but would provide needed clarity and corrections to the bill.

SB 590 would significantly expand the authority of the Board and care should be taken to provide clarity and avoid unintended consequences. MACo is willing to work with the Committee, bill sponsor, and other stakeholders to address our concerns. Accordingly, MACo requests the Committee give SB 590 a **FAVORABLE WITH AMENDMENTS** report.

Proposed "reprint" draft of SB 590, with MACo suggested amendments. Full amendment language lessened the readability of the document but will be provided to Committee Counsel.

SENATE BILL 590

P3

Olr3176
CF HB 502

By: **Senators Kagan and Lam**

Introduced and read first time: January 31, 2020

Assigned to: Education, Health and Environmental Affairs

A BILL ENTITLED

AN ACT concerning

Public Information Act – Revisions

FOR the purpose of requiring each official custodian to adopt a certain policy of proactive disclosure; providing that the policy may vary in a certain manner and include the publication of certain records or information; requiring each official custodian to publish a certain annual report on a certain website, to the extent practicable; requiring the report of an official custodian to include certain information; requiring a certain member of the Public Information Act Compliance Board to have served as a custodian, rather than an official custodian, in the State; requiring two members of the Board, rather than one member, to be attorneys; requiring one member of the Board to be knowledgeable about electronic records; requiring the Office of the Attorney General to provide at least a certain number of staff members to assist the Board and requiring the Office of the Public Access Ombudsman to carry out certain duties; requiring the Board to receive, review, and resolve certain complaints from applicants and applicants' designated representatives and certain complaints from a custodian; altering the minimum fee charged under which the Board is required to take certain actions with regard to a complaint; requiring the Board to order a custodian to take certain actions under certain circumstances; requiring the Board to issue an order authorizing a custodian to take certain actions under certain circumstances; requiring the Board to adopt certain regulations; altering the circumstances under which an applicant or an applicant's designated representative is authorized to file a certain written complaint; authorizing a custodian to file a certain complaint under certain circumstances; altering the time period within which a certain complaint must be filed; altering the time period within which a certain response must be filed; requiring a custodian to provide certain information to the Board on request; requiring a custodian or an applicant, on request of the Board, to provide a certain affidavit; requiring the Board to maintain the confidentiality of certain records and information; altering certain time periods within which the Board must issue certain decisions and opinions under certain circumstances;

requiring the Ombudsman to issue a certain final determination within a certain period of time except under certain circumstances; requiring the Ombudsman to inform the applicant and the custodian of the availability of certain review by the Board under certain circumstances; authorizing the Ombudsman to disclose certain information to certain persons; authorizing the Ombudsman to transfer certain information to the Board under certain circumstances; requiring the Ombudsman to submit a certain annual report to the Governor and the General Assembly; requiring the Ombudsman's report to include certain information; prohibiting a custodian from failing to respond to an application for the inspection of a public record within certain time limits except under certain circumstances; prohibiting a custodian who violates a certain provision of this Act from charging a certain fee; requiring the Office of the Attorney General to allocate certain staff members on or before a certain date; making stylistic and conforming changes; and generally relating to the Public Information Act.

BY repealing and reenacting, without amendments,
Article – General Provisions
Section 4–101(a) and (c) and 4–1B–01
Annotated Code of Maryland
(2019 Replacement Volume)

BY adding to
Article – General Provisions
Section 4–104 and 4–105
Annotated Code of Maryland
(2019 Replacement Volume)

BY repealing and reenacting, with amendments,
Article – General Provisions
Section 4–1A–02(a), 4–1A–03(d), 4–1A–04 through 4–1A–07, 4–1B–02(b), 4–1B–04,
and 4–4027
Annotated Code of Maryland
(2019 Replacement Volume)

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

Article – General Provisions

4–101.

(a) In this title the following words have the meanings indicated.

(c) “Board” means the State Public Information Act Compliance Board.

4-104.

(A) EACH OFFICIAL CUSTODIAN SHALL ADOPT A POLICY OF PROACTIVE DISCLOSURE OF PUBLIC RECORDS THAT ARE AVAILABLE FOR INSPECTION UNDER THIS TITLE.

(B) THE POLICY ADOPTED UNDER SUBSECTION (A) OF THIS SECTION MAY:

(1) VARY AS APPROPRIATE TO THE TYPE OF PUBLIC RECORD AND TO REFLECT THE STAFF AND BUDGETARY RESOURCES OF THE GOVERNMENTAL UNIT; AND

(2) INCLUDE PUBLICATION OF PUBLIC RECORDS ON THE WEBSITE OF THE GOVERNMENTAL UNIT OR PUBLICATION OF PRIOR RESPONSES TO REQUESTS FOR INSPECTION MADE UNDER THIS TITLE.

4-105.

(A) ON OR BEFORE JULY 1 EACH YEAR, EACH OFFICIAL CUSTODIAN SHALL PUBLISH ON THE WEBSITE OF THE GOVERNMENTAL UNIT, TO THE EXTENT PRACTICABLE, A REPORT ON THE REQUESTS RECEIVED DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR UNDER THIS TITLE FOR INSPECTION OF PUBLIC RECORDS OF THE GOVERNMENTAL UNIT.

(B) THE REPORT SHALL INCLUDE:

(1) THE NUMBER OF REQUESTS RECEIVED UNDER THIS TITLE, INCLUDING:

(I) THE NUMBER OF REQUESTS GRANTED OR DENIED WITHIN 10 BUSINESS DAYS;

(II) THE NUMBER OF REQUESTS GRANTED OR DENIED WITHIN 30 DAYS; AND

(III) THE NUMBER OF REQUESTS GRANTED OR DENIED IN MORE THAN 30 DAYS AND THE REASONS FOR THE DELAYS, INCLUDING THE NUMBER OF EXTENSIONS REQUESTED AND THE NUMBER OF REQUESTS THAT WERE THE SUBJECT OF DISPUTE RESOLUTION UNDER § 4-1B-04 OF THIS TITLE;

(2) THE OUTCOMES OF THE REQUESTS, INCLUDING:

(I) THE TOTAL NUMBER OF REQUESTS GRANTED IN FULL;

(II) THE TOTAL NUMBER OF REQUESTS GRANTED IN PART;

(III) THE TOTAL NUMBER OF REQUESTS DENIED IN FULL; AND

(IV) THE TOTAL NUMBER OF REQUESTS FOR WHICH REDACTED PUBLIC RECORDS WERE PROVIDED;

(3) THE AMOUNT OF FEES CHARGED UNDER § 4-206 OF THIS TITLE;

**(4) THE NUMBER OF FEE WAIVERS GRANTED UNDER § 4-206(E) OF THIS TITLE;
AND**

(5) A DESCRIPTION OF EFFORTS BY THE GOVERNMENTAL UNIT TO PROACTIVELY DISCLOSE INFORMATION IN ACCORDANCE WITH THE POLICY ADOPTED UNDER § 4-104 OF THIS SUBTITLE.

4-1A-02.

(a) (1) The Board consists of five members.

(2) (i) One member of the Board shall be a representative:

1. from a nongovernmental nonprofit group that is organized in the State;

2. who works on issues related to transparency or open government; and

3. who is nominated by representatives of the open government and news media communities.

(ii) One member of the Board shall:

1. have knowledge of the provisions of this title;

2. have served as [an official] A custodian in the State as defined in § 4-101(d) of this title; and

3. be nominated by the Maryland Association of Counties and the Maryland Municipal League.

(iii) 1. Three members of the Board shall be private citizens of the State.

2. A private citizen member of the Board may not be:

A. a custodian of a public record;

- B. a member of the news media; or
- C. a staff member or spokesperson for an organization that represents the interests of custodians or applicants for public records.

(3) At least [one member] **TWO MEMBERS** of the Board shall be [an attorney] **ATTORNEYS** admitted to the Maryland Bar.

(4) AT LEAST ONE MEMBER OF THE BOARD SHALL BE KNOWLEDGEABLE ABOUT ELECTRONIC RECORDS, INCLUDING ELECTRONIC STORAGE, RETRIEVAL, REVIEW, AND REPRODUCTION TECHNOLOGIES.

[(4)] (5) (i) The Governor shall publish, on the website of the Office of the Governor, notice of the Governor's intent to consider applicants for positions on the Board.

(ii) The notice shall include:

1. application procedures;
2. criteria for evaluating an applicant's qualifications; and
3. procedures for resolving any conflicts of interest.

(iii) The Governor shall solicit recommendations for positions on the Board from representatives of the custodian, news media, and nonprofit communities.

(iv) 1. An individual may submit to the Governor an application for membership on the Board as provided under subparagraph (ii) of this paragraph.

2. The names and qualifications of applicants shall be posted on the website of the Office of the Governor.

(v) When evaluating an applicant, the Governor shall:

1. consider the need for geographic, political, racial, ethnic, cultural, and gender diversity on the Board; and
2. ensure the neutrality of the Board.

[(5)] (6) Subject to paragraphs (2) [and (3)] **THROUGH (4)** of this subsection and with the advice and consent of the Senate, the Governor shall appoint the members of the Board from the pool of applicants under paragraph **[(4)] (5)** of this subsection.

(d) (1) [The] **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE** Office of the Attorney General shall provide staff and office space for the Board.

(2) **THE OFFICE OF THE ATTORNEY GENERAL SHALL PROVIDE AT LEAST FOUR STAFF MEMBERS TO ASSIST THE BOARD AND THE OFFICE OF THE PUBLIC ACCESS OMBUDSMAN TO CARRY OUT THE DUTIES OF THE BOARD UNDER THIS SUBTITLE AND THE OFFICE UNDER SUBTITLE 1B OF THIS TITLE.**

4-1A-04.

(a) The Board shall:

(1) receive, review, and, subject to § 4-1A-07 of this subtitle, resolve complaints filed under § 4-1A-05 of this subtitle from any applicant or the applicant's designated representative alleging that a custodian:

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

~~(II)~~ charged an unreasonable fee under § 4-206 of this title **OF MORE THAN \$200;**

~~(III)~~ **UNREASONABLY FAILED TO WAIVE A FEE UNDER § 4-206(E) OF THIS TITLE; OR**

~~(IV)~~ **FAILED TO RESPOND TO A REQUEST FOR A PUBLIC RECORD WITHIN THE TIME LIMITS ESTABLISHED UNDER § 4-203(C)(1(I)) OF THIS TITLE;**

(2) issue a written opinion as to whether a violation has occurred; and

(3) **IF THE BOARD OPINES THAT A VIOLATION OCCURRED,** ORDER THE CUSTODIAN TO:

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

~~(II)~~ if the Board finds that the custodian charged an unreasonable fee under § 4-206 of this title, [order the custodian to] reduce the fee to an amount determined by the Board to be reasonable and refund the difference;

~~(III)~~ **IF THE BOARD FINDS THAT THE CUSTODIAN UNREASONABLY FAILED TO WAIVE A FEE UNDER § 4-206(E) OF THIS TITLE, WAIVE THE FEE OR RECONSIDER THE FEE WAIVER REQUEST; OR**

(IV) IF THE BOARD FINDS THAT THE CUSTODIAN FAILED TO RESPOND TO A REQUEST FOR A PUBLIC RECORD WITHIN THE TIME LIMITS ESTABLISHED UNDER § 4-203 OF THIS TITLE, PROMPTLY RESPOND AND, AT THE BOARD'S DISCRETION, ~~WAIVE ANY~~ RECONSIDER ANY FEE THE CUSTODIAN IS OTHERWISE ENTITLED TO CHARGE UNDER § 4-206 OF THIS TITLE.

(B) THE BOARD SHALL:

(1) RECEIVE, REVIEW, AND, SUBJECT TO § 4-1A-07 OF THIS SUBTITLE, RESOLVE COMPLAINTS FILED UNDER § 4-1A-05 OF THIS SUBTITLE FROM ANY CUSTODIAN ALLEGING THAT AN APPLICANT'S REQUEST OR PATTERN OF REQUESTS IS FRIVOLOUS, VEXATIOUS, OR IN BAD FAITH;

(2) ISSUE A WRITTEN OPINION AS TO WHETHER THE APPLICANT'S REQUEST OR PATTERN OF REQUESTS IS FRIVOLOUS, VEXATIOUS, OR IN BAD FAITH; AND

(3) IF THE BOARD FINDS THAT THE APPLICANT'S REQUEST IS FRIVOLOUS, VEXATIOUS, OR IN BAD FAITH, BASED ON THE TOTALITY OF THE CIRCUMSTANCES INCLUDING THE NUMBER AND SCOPE OF THE APPLICANT'S PAST REQUESTS AND THE CUSTODIAN'S RESPONSES TO PAST REQUESTS AND EFFORTS TO COOPERATE WITH THE APPLICANT, ISSUE AN ORDER AUTHORIZING THE CUSTODIAN TO:

(I) IGNORE THE REQUEST THAT IS THE SUBJECT OF THE CUSTODIAN'S COMPLAINT; OR

(II) RESPOND TO A LESS BURDENSOME VERSION OF THE REQUEST WITHIN A REASONABLE TIME FRAME, AS DETERMINED BY THE BOARD.

[(b)] (C) The Board shall:

(1) ADOPT REGULATIONS TO CARRY OUT SUBTITLES 1A AND 1B OF THIS TITLE;

[(1)] (2) study ongoing compliance with this title by custodians; and

[(2)] (3) make recommendations to the General Assembly for improvements to this title.

[(c)] (D)(1) On or before October 1 of each year, the Board shall submit a report to the Governor and, subject to § 2-1257 of the State Government Article, the General Assembly.

(2) The report shall:

(i) describe the activities of the Board;

- (ii) describe the opinions of the Board;
- (iii) state the number and nature of complaints filed with the Board; and
- (iv) recommend any improvements to this title.

4-1A-05.

(a) Any applicant [or], the applicant's designated representative, **OR A CUSTODIAN** may file a written complaint with the Board seeking a written opinion and order from the Board **UNDER § 4-1A-04 OF THIS SUBTITLE** if:

(1) [a custodian charged a fee under § 4-206 of this title of more than \$350] **THE COMPLAINANT HAS ATTEMPTED TO RESOLVE THE DISPUTE THROUGH THE OFFICE OF THE PUBLIC ACCESS OMBUDSMAN UNDER § 4-1B-04 OF THIS TITLE;** and

(2) [the complainant alleges in the complaint that the fee is unreasonable] **THE PUBLIC ACCESS OMBUDSMAN HAS ISSUED A FINAL DETERMINATION STATING THAT THE DISPUTE WAS NOT RESOLVED.**

(b) The complaint shall:

(1) identify the custodian **OR APPLICANT** that is the subject of the complaint;

(2) describe the action of the custodian **OR APPLICANT**, the date of the action, and the circumstances of the action;

(3) be signed by the complainant;

(4) if available, include a copy of the original request for public records **AND THE CUSTODIAN'S RESPONSE, IF ANY;** and

(5) be filed within [90] **45** days after the [action that is the subject of the complaint occurred] **COMPLAINANT RECEIVES THE FINAL DETERMINATION OF THE PUBLIC ACCESS OMBUDSMAN UNDER § 4-1B-04 OF THIS TITLE.**

4-1A-06.

(a) Except as provided in subsection (c) of this section, on receipt of a written complaint, the Board promptly shall:

(1) send the complaint to the custodian **OR APPLICANT** identified in the complaint;
and

(2) request that a response to the complaint be sent to the Board.

(b) (1) The custodian **OR APPLICANT** shall file a written response to the complaint within [15] **30** days after [the custodian receives] **RECEIVING** the complaint.

(2) On request of the Board, the custodian shall [include with its written response to the complaint] **PROVIDE:**

(I) **IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN FAILED TO RESPOND TO A REQUEST FOR A PUBLIC RECORD WITHIN THE TIME LIMITS ESTABLISHED UNDER § 4-203(C)(1)(I) OF THIS TITLE, A RESPONSE TO THE REQUEST FOR THE PUBLIC RECORD;**

(II) **IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN DENIED INSPECTION OF A PUBLIC RECORD IN VIOLATION OF THIS TITLE:**

1. **A COPY OF THE PUBLIC RECORD OR DESCRIPTIVE INDEX OF THE PUBLIC RECORD, AS APPROPRIATE; AND**

2. **THE PROVISION OF LAW ON WHICH THE CUSTODIAN RELIED IN DENYING INSPECTION OF THE PUBLIC RECORD;**

(III) **IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN CHARGED AN UNREASONABLE FEE UNDER § 4-206 OF THIS TITLE, the basis for the fee that was charged; OR**

(IV) **IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN UNREASONABLY FAILED TO WAIVE A FEE UNDER § 4-206 OF THIS TITLE, THE BASIS ON WHICH THE CUSTODIAN DENIED THE WAIVER REQUEST.**

~~(3) **ON REQUEST OF THE BOARD, A CUSTODIAN OR AN APPLICANT SHALL PROVIDE AN AFFIDAVIT CONTAINING A STATEMENT OF FACTS THAT ARE AT ISSUE IN THE COMPLAINT.**~~

~~(4) **(I) THE BOARD SHALL MAINTAIN THE CONFIDENTIALITY OF ANY RECORD OR CONFIDENTIAL INFORMATION SUBMITTED BY A CUSTODIAN OR AN APPLICANT UNDER THIS SUBSECTION THAT IS NOT A PUBLIC RECORD.**~~

~~(II) **RECORDS OR INFORMATION PROVIDED TO THE BOARD ARE NOT SUBJECT TO A REQUEST UNDER SECTION 201 OF THIS TITLE.**~~

(c) If a written response **OR INFORMATION REQUESTED UNDER SUBSECTION (B) OF THIS SECTION** is not received within [45] **30** days after the [notice] **REQUEST** is sent, the Board shall decide the case on the facts before the Board.

4-1A-07.

(a) (1) The Board shall review the complaint and any response.

(2) [If the information in the complaint and response is sufficient for making a determination based on the Board's own interpretation of the evidence,] **THE BOARD SHALL ISSUE A WRITTEN OPINION** within 30 days after receiving [the response, the Board shall issue a written opinion as to whether a violation of this title has occurred or will occur] **THE WRITTEN RESPONSE AND ALL INFORMATION REQUESTED UNDER § 4-1A-06(B) OF THIS SUBTITLE.**

(b) (1) (i) Subject to subparagraph (ii) of this paragraph, if the Board is unable to reach a determination based on the written submissions before it, the Board may schedule an informal conference to hear from the complainant, the **AFFECTED** custodian **OR APPLICANT**, or any other person with relevant information about the subject of the complaint.

(ii) The Board shall hold the informal conference under subparagraph (i) of this paragraph in a location that is as convenient as practicable to the complainant and the **AFFECTED** custodian **OR APPLICANT**.

(2) When conducting a conference that is scheduled under paragraph (1) of this subsection, the Board may allow the parties to testify by teleconference or submit written testimony by electronic mail.

(3) An informal conference scheduled by the Board is not a contested case within the meaning of § 10-202(d) of the State Government Article.

(4) The Board shall issue a written opinion within 30 days after the informal conference.

(c) (1) If the Board is unable to issue an opinion on a complaint within the time periods specified in subsection (a) or (b) of this section, the Board shall:

(i) state in writing the reason for its inability to issue an opinion; and

(ii) issue an opinion as soon as possible but not later than [90] **120** days after the filing of the complaint.

(2) An opinion of the Board may state that the Board is unable to resolve the complaint.

(d) The Board shall send a copy of the written opinion to the complainant and the affected custodian **OR APPLICANT**.

4-1B-01.

In this subtitle, "Ombudsman" means the Public Access Ombudsman.

4-1B-02.

(b) [The] **SUBJECT TO § 4-1A-03(D)(2) OF THIS TITLE, THE** Office of the Attorney General shall provide office space and staff for the Ombudsman, with appropriate steps taken to protect the autonomy and independence of the Ombudsman.

4-1B-04.

(a) Subject to subsection [(b)] **(D)** of this section, the Ombudsman shall make reasonable attempts to resolve disputes between applicants and custodians relating to requests for public records under this title, including disputes over:

- (1) the custodian's application of an exemption;
- (2) redactions of information in the public record;
- (3) the failure of the custodian to produce a public record in a timely manner or to disclose all records relevant to the request;
- (4) overly broad requests for public records;
- (5) the amount of time a custodian needs, given available staff and resources, to produce public records;
- (6) a request for or denial of a fee waiver under § 4-206(e) of this title; and
- (7) repetitive or redundant requests from an applicant.

(B) WITHIN 90 DAYS AFTER RECEIVING A REQUEST FOR DISPUTE RESOLUTION, UNLESS THE PARTIES MUTUALLY AGREE TO EXTEND THE DEADLINE, THE OMBUDSMAN SHALL ISSUE A FINAL DETERMINATION STATING:

- (1) THAT THE DISPUTE HAS BEEN RESOLVED; OR**
- (2) THAT THE DISPUTE HAS NOT BEEN RESOLVED.**

(C) IF THE OMBUDSMAN ISSUES A FINAL DETERMINATION STATING THAT THE DISPUTE HAS NOT BEEN RESOLVED, THE OMBUDSMAN SHALL INFORM THE APPLICANT AND THE CUSTODIAN OF THE AVAILABILITY OF REVIEW BY THE BOARD UNDER § 4-1A-04 OF THIS TITLE.

[(b)] **(D)** (1) When resolving disputes under this section, the Ombudsman may not:

(i) compel a custodian to disclose public records or redacted information in the custodian's physical custody to the Ombudsman or an applicant; or

(ii) except as provided in [paragraph] **PARAGRAPHS (2) AND (3)** of this subsection, disclose information received from an applicant or custodian without written consent from the applicant and custodian.

(2) The Ombudsman may disclose information received from an applicant or custodian to the assistant Attorney General assigned to the Office of the **PUBLIC ACCESS Ombudsman OR TO ANY OTHER PERSON WORKING UNDER THE DIRECTION OF THE OMBUDSMAN, SUBJECT TO THE CONFIDENTIALITY REQUIREMENTS IN § 4-1A-06(B)(4) OF THIS TITLE.**

(3) **THE OMBUDSMAN MAY TRANSFER BASIC INFORMATION ABOUT A DISPUTE, INCLUDING THE IDENTITY OF THE APPLICANT AND CUSTODIAN AND THE NATURE OF THE DISPUTE, TO THE BOARD IF APPROPRIATE STEPS HAVE BEEN TAKEN TO PROTECT THE CONFIDENTIALITY OF COMMUNICATIONS MADE OR RECEIVED IN THE COURSE OF ATTEMPTING TO RESOLVE THE DISPUTE.**

(E) (1) **ON OR BEFORE OCTOBER 1 EACH YEAR, IN CONJUNCTION WITH THE REPORT OF THE PUBLIC INFORMATION ACT COMPLIANCE BOARD REQUIRED UNDER § 4-1A-04 OF THIS TITLE, THE OMBUDSMAN SHALL SUBMIT A REPORT TO THE GOVERNOR AND, SUBJECT TO § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.**

(2) **THE REPORT SHALL:**

(I) **DESCRIBE THE ACTIVITIES OF THE OMBUDSMAN;**

(II) **STATE THE NUMBER AND NATURE OF REQUESTS FOR DISPUTE RESOLUTION MADE TO THE OMBUDSMAN;**

(III) **DESCRIBE THE AGGREGATE OUTCOMES OF DISPUTE RESOLUTIONS CONDUCTED BY THE OMBUDSMAN;**

(IV) **HIGHLIGHT ANY AREAS OF CONCERN AND RECOMMEND BEST PRACTICES FOR GOVERNMENTAL UNITS IN RESPONDING TO REQUESTS FOR PUBLIC RECORDS UNDER THIS TITLE; AND**

(V) **RECOMMEND ANY IMPROVEMENTS TO THIS TITLE.**

4-402.

(a) (1) A person may not:

- [(1)] (I) willfully or knowingly violate any provision of this title;
 - [(2)] (II) fail to petition a court after temporarily denying inspection of a public record; or
 - [(3)] (III) by false pretenses, bribery, or theft, gain access to or obtain a copy of a personal record if disclosure of the personal record to the person is prohibited by this title.
- [(b)] (2) A person who violates [any provision] **PARAGRAPH (1)** of this [section] **SUBSECTION** is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000.

(B) ~~(1)~~ A CUSTODIAN MAY NOT FAIL TO RESPOND TO A REQUEST FOR THE INSPECTION OF A PUBLIC RECORD WITHIN THE TIME LIMITS ESTABLISHED UNDER § 4-203(C)(1)(I) OF THIS TITLE UNLESS THE CUSTODIAN HAS REQUESTED:

- (I) AN EXTENSION UNDER § 4-203(D) OF THIS TITLE; OR**
- (II) DISPUTE RESOLUTION UNDER § 4-1B-04 OF THIS TITLE.**

~~**(2) A CUSTODIAN WHO VIOLATES PARAGRAPH (1) OF THIS SUBSECTION MAY NOT CHARGE A FEE FOR RESPONDING TO THE REQUEST.**~~

SECTION 2. AND BE IT FURTHER ENACTED, That, on or before July 1, 2021, the Office of the Attorney General shall allocate any additional staff members required to be assigned under § 4-1A-03(d)(2) of the General Provisions Article, as enacted by Section 1 of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2020.

MML_Fiore_FWA_SB0590

Uploaded by: Fiore, Justin

Position: FWA



Maryland Municipal League
The Association of Maryland's Cities and Towns

TESTIMONY

February 13, 2020

Committee: Senate Health, Education, and Environmental Affairs

Bill: SB 590 – Public Information Act – Revisions

Position: Support with Amendment

Reason for Position:

The Maryland Municipal League supports SB 590 with amendments. The legislation would expand the Public Information Act Compliance Board's authority with the goal of creating a quicker and cheaper alternative to settling disputes than currently exists in Maryland. Our position, however, is not without concern.

The League supports transparency in government and values the contributions of the Compliance Board and Ombudsman to this discussion through their Final Report on the Public Information Act. Much of the recommendations contained form the basis of our support, as MML recognizes the benefit of providing a cheaper and quicker solution when parties cannot agree on the appropriate fee, use of fee waivers, or when an agency fails to respond. We do believe that the inspection of public documents that have been denied is a much trickier subject, but one that we could stomach with appropriate safeguards. The new authority for the Board to review and rule on frivolous, vexatious, or bad faith requests is much welcomed and becomes a key in balancing this bill's new labor requirements (policy creation and implementation, mandatory mediation, and reporting) with existing duties.

We have shared the following amendment considerations with the bill's sponsor (some technical, some substantive):

4-104 (B)(2) & 4-105 (A):

We would like to see language added here that provides an alternative SOLELY for jurisdictions that don't maintain a website. Languages could be similar to that in 4-503: "if the governmental unit does not have a Web site, keep the contact information maintained under this subsection at a place easily accessible by the public;"

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4-1A-04 (a)(IV):

We would appreciate some clarification on whether this is related to the initial response to a request or the final response with appropriate documents. Additionally, since we are giving the Board discretion over fee waivers, we believe it would also make sense to give the Board discretion over the fee waiver amounts, allowing them to waive “part of or all” of a fee. Finally, if the intent is for a completed response, we would ask that language be included that bars a fee waiver when the custodian files a complaint under the new 4-1A-4 (B) of this subtitle (frivolous, vexatious, or in bad faith requests) and is in dispute.

4-1A-04 (C)(1) – line 26:

Possible oversight in giving the Board authority to “adopt regulations to carry out this “TITLE.” We think it should be “Subtitle.”

4-1A-05:

Possible oversight with section 4-1A-05 and the duties of the Ombudsman contained within 4-1B-04 (which doesn’t include the ability to review fees). I’m wondering since this makes the Ombudsman a mandatory step before going to the board, does the review of fees either needs to be added to the Ombudsman’s list of duties or does their needs to be an exemption that allows applicants/custodians to go straight to the Board in these cases?

4-1A-06 (B)(2)(I):

Same as before – we would appreciate some clarification on whether this is related to the initial response to a request or the final response with appropriate documents.

4-1A-06 (B)(4):

I believe this is the area Delegate Lierman’s amendment was intended to clarify.
“THE BOARD SHALL MAINTAIN THE CONFIDENTIALITY OF ANY RECORD OR CONFIDENTIAL INFORMATION SUBMITTED BY A CUSTODIAN OR AN APPLICANT UNDER THIS SUBSECTION IF THE CUSTODIAN OR APPLICANT CLAIMS THE RECORD OR INFORMATION IS CONFIDENTIAL.”

It’s a welcome (and needed) amendment.

We would still like to see language added here that is similar to Section 4-403 but relating to information shared with the Board. 4-403 reads: “A custodian is not civilly or criminally liable for transferring or disclosing the contents of a public record to the Attorney General under § 5-313 of the State Personnel and Pensions Article.”

4-402:

Once again, we would appreciate some clarification on whether this is related to the initial response to a request or the final response with appropriate documents. It also appears to me to be at odds with the discretionary fee waiver under 4-1A-04.

Section 2 – effective date:

We've received some concern over the ability to digest and adopt/implement policies (including for proactive disclosure and reporting) by July 1. MML would appreciate an October 1st effective date.

As drafted, the League does not believe SB 590 contains the appropriate balances and safeguards need to expand the Board's authority in way that judiciously advances the public interest. MML is committed to working with the sponsor and Committee on amendments to further the goals of the bill.

The League therefore respectfully requests that this committee provide SB 590 with a favorable report with the appropriate amendments.

FOR MORE INFORMATION CONTACT:

Scott A. Hancock	Executive Director
Candace L. Donoho	Government Relations Specialist
Bill Jorch	Manager, Government Relations & Research
Justin Fiore	Manager, Government Relations

MABE_John.Woolums_FWA_SB590

Uploaded by: Woolums, John

Position: FWA

BILL: Senate Bill 590
TITLE: Public Information Act – Revisions
DATE: February 13, 2020
POSITION: SUPPORT WITH AMENDMENTS
COMMITTEE: Education, Health, and Environmental Affairs
CONTACT: John R. Woolums, Esq.

The Maryland Association of Boards of Education (MABE), representing all of the state's local boards of education, supports Senate Bill 590 with the amendments outlined below. Local boards, county governments, and municipalities agree that with the adoption of requested amendments this legislation can advance the State's role in resolving disputes arising under the Public Information Act.

MABE recognizes that this bill represents the evolution of the recently created Public Information Act Compliance Board (Compliance Board), and the recommendations of the Compliance Board following the 2019 legislative session. The law creating the Compliance Board passed in 2015, and since that time the duties of the Board have included:

- Receiving, reviewing, and resolving complaints that a custodian of public records charged an unreasonable fee that exceeds \$350;
- Issuing a written opinion regarding whether a violation has occurred relating to a fee, including the ability to direct a reduction of a fee or a refund of the portion of a fee that was unreasonable;
- Studying ongoing compliance with the PIA by custodians of public records; and
- Making recommendations to the General Assembly for improvements to the PIA.

Local boards of education support this statutory framework, and MABE requests amendments to the proposed bill to preserve much of the current process in order to avoid adopting an unduly litigious approach to administering and resolving disputes arising from public information requests. The proposed expansion of the Compliance Board's authority will foreseeably result in school systems being involved in a significantly greater number of disputes which will involve submissions, exhibits and appearances or involvement in conferences. All of these activities will require staff time and in many cases the need for legal counsel, and result in additional costs to school systems that may be avoidable if certain amendments are adopted.

For example, MABE requests an amendment to remove the ability of the Compliance Board to waive a fee if a custodian's response is merely late, or in cases where the custodian has filed a complaint against the applicant. MABE seeks further clarification of the provisions requiring custodians to provide records or indexes of records in dispute to the compliance board for review. It appears that the Compliance Board's duty to maintain confidentiality extends only to records it deems to not be public records. Local boards seek additional legal protection from any claims that we, through this process, disclosed confidential information that was later made public by the Compliance Board. Lastly, in light of the dramatic expansion of the scope of the Ombudsman's and Compliance Board's authority, need for implementing regulations, MABE requests that the effective date be amended to October 1.

Local school systems take very seriously the responsibility to comply with the Maryland Public Information Act, which is intended to grant the public a broad right of access to records that are in the possession of State and local government agencies, including local boards of education. Each school system is responsible for managing and maintaining an enormous amount information, including public records, but also including student records, and records not subject to inspection or access under state or federal laws. Restriction of public access to records maintained by local school systems is already limited in other circumstances under state law. For example, there is an affirmative duty to deny access to county board records that are legally confidential, such as pursuant to lawyer-client privilege.

The law additionally provides for required denial for personnel files, letters of reference, retirement records, or individual student records. Other required denials are for medical and psychological records, home addresses and telephone numbers of employees, individual financial records, and records of information system security. Finally, a local board may deny access to records where disclosure would be contrary to the public interest, such as, investigation records, security records, testing records, and real estate appraisals while acquisition is pending.

Local boards appreciate the necessary balance of ensuring that governmental entities are delivering on the promise of transparency in governance and administration and the need for reasonable limitations on obligations to expend limited time and resources to respond to frivolous requests. Therefore, MABE appreciates the provision clarifying that custodians of records are permitted not to respond to requests deemed to be frivolous, vexatious, or in bad faith.

Therefore, MABE requests a favorable report on Senate Bill 590 with the amendments described above.

GaryHicks_UNF_Board of Nursing_SB590

Uploaded by: Hicks, Gary

Position: UNF



Board of Nursing

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall,
Secretary

February 13, 2020

The Honorable Paul G. Pinsky, Chair
Education, Health, and Environmental Affairs Committee
2 West, Miller Senate Office Building
Annapolis, MD 21401-1991

RE: SB 590 –Public Information Act -Letter of Concern

Dear Chair Pinsky and Committee Members:

The Maryland Board of Nursing respectfully submits this letter of concern for SB 590 -Public Information Act - Revisions. The purpose of the proposed legislation is to expand the authority of the Public Information Act Compliance Board to resolve disputes, through additional means, between an applicant and an official custodian. However, this legislation is unnecessary as under current law, applicants are able to resolve disputes through the Office of the Public Access Ombudsman.

Ambiguous language of the proposed legislation regards the Compliance Board's definition of what constitutes 'proactive disclosure' of public records, and how that is determined. If not clearly specified, the Compliance Board and each Health Occupations Board may interpret this statement differently.

Another difficult aspect includes the expansion of the Compliance Board's ability to perform the following duties: change the amount or waive an applicant's fees, conduct an investigation prior to a response from an official custodian, and require an official custodian to disclose public information to the applicant.

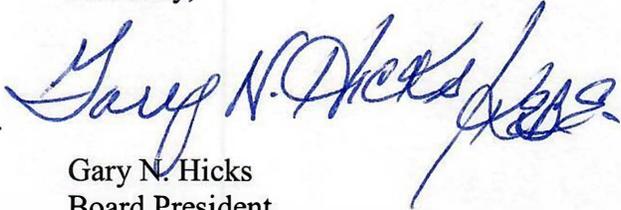
This bill would decrease revenue for the Board of Nursing, more specifically, if the Compliance Board waived or reduced fees for applicants.

The Board of Nursing would like to request data reports to detail dispute resolutions for official custodians employed by varying Health Occupation Boards, including disputes seen by the Public Information Act Compliance Board and Public Access Ombudsman.

I hope this information is useful. If you would like to discuss this further, please contact Deputy Director Rhonda Scott at 410-585-1953 or rhonda.scott2@maryland.gov; Executive Director Karen E. B. Evans at 410-585-1914 or karene.evans@maryland.gov

Thank you for your consideration of the Board's position.

Sincerely,

A handwritten signature in blue ink that reads "Gary N. Hicks" followed by a stylized flourish.

Gary N. Hicks
Board President

The opinion of the Board expressed in this document does not necessarily reflect that of the Department of Health or the Administration.

USMD_Patrick Hogan_UNF_SB0590

Uploaded by: Hogan, Patrick

Position: UNF



SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE

Senate Bill 590

Public Information Act - Revisions

February 13, 2020

Unfavorable Report

Patrick Hogan, Vice Chancellor for Government Relations

Chair Pendergrass, Vice Chair Delegate Pena-Melnyk and committee members, thank you for the opportunity to share our thoughts on Senate Bill 590. The bill expands the jurisdiction of the Public Information Act (PIA) Compliance Board to include additional types of disputes; institutes an integrated PIA complaint resolution process that includes the Public Access Ombudsman; and requires a custodian to adopt a proactive disclosure policy.

Implementing these changes will require the University System of Maryland to devote significantly more resources to this task. In attempting to meet this broad array of mandates, given the consistently high volume and complexity of PIA requests received, information technology and legal services would need significant investments in resources. For fiscal year 2021, the combined estimated fiscal impact for one USM institution is expected to be \$775,000 – not including benefits.

The required proactive disclosure of records and the required recordkeeping and reporting will simply create additional work for institutions. The expanded jurisdiction of the PIA Compliance Board to include disputes over fee charges over \$200, disputes over withheld documents, and disputes over missed deadlines will increase the workload of institutions that will have to respond to complaints filed with the Board. The Board's authority to waive a will likely result in reduced recovery of the value of time spent in fulfilling requests, as fee payments will go down.

Senate Bill 590 gives the Board the authority to review and resolve complaints of agencies regarding requesters whose "request or pattern of requests is frivolous, vexatious, or in bad faith." While this is a potentially positive development, USM institutions still receive multiple and/or repetitive requests over extended periods of time from specific individuals. However, there are less intrusive and burdensome methods to address this narrow problem.

Thank you for allowing the USM to share our thoughts regarding House Bill 502 and urge an unfavorable report.

RuthMaiorana_UNF_MACHO_SB590

Uploaded by: Maiorana, Ruth

Position: UNF



**2020 SESSION
POSITION PAPER**

BILL: SB 590 – Public Information Act - Revisions
COMMITTEE: Education, Health, and Environmental Affairs
POSITION: Letter of Concern

BILL ANALYSIS: SB 590 would require custodians of public records to adopt a ‘proactive disclosure’ policy appropriate to the type of public record and reflecting the staff and budgetary resources of the governmental unit, include publication of public records and publication of prior responses to request for inspection under this policy on the unit’s website, publish a report of the requests and responses on their website yearly before July 1 per specifications, make changes to the Board composition and responsibilities, including actions around fees, and require the OAG to provide staff to the Board and Office of Public Access Ombudsman, adopt regulations and other related duties for the Compliance Board regarding requests or patterns of requests deemed to be frivolous or vexatious.

POSITION RATIONALE: The Maryland Association of County Health Officers (MACHO) respectfully submits this Letter of Concern regarding SB 590.

Local Health Departments (LHD) support effective customer service, transparency and accountability, but also have a legal obligation to be diligent stewards of protected information to ensure that sensitive data does not reach the wrong hands. On an annual basis, LHDs respond to thousands of Public Information Act (PIA) requests. These range from resident requests for birth, death and environmental health records to responses to court orders and media inquiries. Some requests can be addressed immediately by the initial point of contact. Other requests may require analyzing hundreds of documents with input from numerous staff, and even legal counsel.

Typically, responsibility for responding to PIA requests are shared by staff across all programs. LHDs rarely have staff whose sole responsibility is completing PIA requests. Staff work to complete requests in a timely manner so backlogs do not arise. A complicating factor in the efficiency of this process is that many LHD records are not digital and are only found in paper format. Consequently, tracking use of these records to comply with a request will also be an analog process. The comprehensive system of tracking and reporting required in this bill will ultimately increase response times, delay the resolution of requests, and increase the fiscal impact of responding to requests. These issues should be taken into consideration when deliberating on SB 590.

For these reasons, the Maryland Association of County Health Officers submits this **letter of concern for SB 590**. For more information, please contact Ruth Maiorana, MACHO Executive Director at рмаioral@jhu.edu or 410-614-6891. *This communication reflects the position of MACHO.*

WyneeHawk_INFO_Board of Physicians_SB590

Uploaded by: Hawk, Wynee

Position: INFO



Board of Physicians

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary

February 13, 2020

The Honorable Paul G. Pinsky, Chair
Education, Health, and Environmental Affairs Committee
2 West, Miller Senate Building
Annapolis, Maryland 21401

Re: SB 590 - Public Information Act - Revisions - Letter of Information

Dear Chair Pinsky and Committee Members:

The Maryland Board of Physicians is actively engaged in responding in a timely manner to Public Information Act requests.

SB 590 requires all those governmental units covered by the Maryland Public Information Act “to adopt a policy of proactive disclosure of public records that are available for inspection under this title”.

The bill also requires the Board to publish a report on its website regarding the requests received during the prior calendar year for inspection of public records and is to include: the number of requests received, the number of requests granted or denied within 10 business days, the number of requests granted or denied in more than 30 days and the reasons for the delays, including the number of extensions requested and the number of requests that were subject to dispute resolution.

Further the report is to note the outcome of the requests granted in full, those granted in part, the number of requests denied in full and the total number of requests for which redacted public records were provided and the amount of fees charged and the number of fee waivers granted and a description of efforts by the governmental units to proactively disclose information pursuant to law.

The Board of Physicians will have significant operational and fiscal impacts from enactment of this legislation.

Sincerely,

DPSCS_Catherine Kahl_INFO_SB0590

Uploaded by: kahl, catherine

Position: INFO



Department of Public Safety and Correctional Services

Office of the Secretary Office of Government and Legislative Affairs

45 Calvert Street, Suite B7A-C, Annapolis MD 21401
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STATE OF MARYLAND

LAWRENCE J. HOGAN, JR.
GOVERNOR

BOYD K. RUTHERFORD
LT. GOVERNOR

ROBERT L. GREEN
SECRETARY

RACHEL SESSA
CHIEF OF STAFF

CHRISTOPHER McCULLY
DEPUTY SECRETARY
ADMINISTRATION

J. MICHAEL ZEIGLER
DEPUTY SECRETARY
OPERATIONS

CAROLYN J. SCRUGGS
ASSISTANT SECRETARY

GARY McLHINNEY
ASSISTANT SECRETARY

CATHERINE KAHL
ACTING DIRECTOR

BILL: SENATE BILL 590

POSITION: LETTER OF INFORMATION

EXPLANATION: This bill will require the Department adopt a policy of proactive disclosure of public records that are available for inspection under General Provisions Article, include publication of public records on the website or publication of prior responses to requests for inspection, and publish an annual report with regards to the number and description of requests. In addition, the bill expands the membership of the Public Information Act Compliance Board.

COMMENTS:

The Department of Public Safety and Correctional Services (DPSCS) is committed to being open, transparent, and collaborative with the public and the communities we serve. The Public Information Act (PIA) allows for the public to request and inspect documents which is a crucial element of the public's trust in our government institutions. DPSCS is committed to safeguarding, archiving, and maintaining public records as well as individual personally identifiable information in accordance with all laws and regulations. DPSCS works in good faith to provide timely and cost-efficient responses, while also balancing the legal and ethical obligations to protect personal and proprietary information.

- Given the span of the agency's responsibilities, and significant number of offenders under its care, custody, and control, the Department receives hundreds of Public Information Act (PIA) requests annually.
- The Department's Division of Correction (DOC) operates approximately 17 State correctional facilities which house offenders sentenced to incarceration for 18 months and longer. The Department also runs the Baltimore City Jail, under the Division of Pretrial, Detention, and Services (DPDS), which houses pretrial detainees and inmates sentenced to incarceration for 18 months and less. Between the DOC and DPDS, the Department is responsible for an average daily population of approximately 21,000 incarcerated offenders.
- As of the end fiscal year 2019, the Division of Parole and Probation supervised 39,191 active criminal cases.

- All public records are covered by the PIA. The term “public record” is defined in General Provisions § 4-101(j) and includes not only written material but also photographs, photostats, films, microfilms, recordings, tapes, computerized records, maps, drawings, and any copy of a public record.
- This bill enhances the responsibilities of the Custodian and, as such, the Custodian will be required to act more quickly on PIA requests. Additional staff, including legal personnel will be required in order to comply with the provision of the bill.
- In addition, SB 590 requires the Department track specific information for annual reporting. The current tracking system does not have the capability to capture the data required under the bill. Significant enhancements to the tracking system would be required at a substantial cost to the Department.
- SB 590 is overly burdensome and the Department is not staffed to meet the requirements.

CONCLUSION: For these reasons, the Department of Public Safety and Correctional Services respectfully requests the Committee consider this information as it deliberates on Senate Bill 590.

AG_Kemerer_LOI_SB590

Uploaded by: KEMERER, HANNIBAL

Position: INFO

BRIAN E. FROSH
Attorney General



ELIZABETH HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

FACSIMILE NO.

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

WRITER'S DIRECT DIAL NO.
410-576-6584

February 13, 2020

To: The Honorable Paul G. Pinsky
Chair, Education, Health, and Environmental Affairs Committee

From: Hannibal G. Williams II Kemerer, Legislative Director, Office of the Attorney General

Re: SB 590 Public Information Act – Revisions (LETTER OF INFORMATION)

Although the Office of the Attorney General does not have a position on Senate Bill 590 at this stage, the Office submits this letter to provide information regarding operational matters for the Committee's consideration.

As an initial matter, the bill requires the Office of the Attorney General to provide two additional staff members (either attorneys or other staff) to support the Public Access Ombudsman and the PIA Compliance Board. However, the bill neither guarantees funding for those two positions nor makes that staffing requirement subject to the appropriation of funds in the budget. As the Ombudsman and PIA Compliance Board explained in their recent report, the PIA Compliance Board will depend heavily on its support staff to help handle its expanded caseload if, as the bill contemplates, the Compliance Board is to continue to be composed of purely volunteer members. *See* Final Report on the Public Information Act, at 37 (Dec. 27, 2019) ("PIA Final Report"); *see also* Maryland Office of the Attorney General, Final Report on the Implementation of the Public Information Act at 15 (Dec. 2017) (explaining that assigning to the Compliance Board the power to adjudicate most or all PIA disputes may "place unreasonable expectations on the Board and its staff," at least without providing the Board with significant additional staff support). Thus, for the Compliance Board to succeed in its mission, it is critical that the bill be accompanied by sufficient funding to hire the necessary attorneys and support staff.



In determining the level of staff support needed for the proposed program to succeed, it is difficult to predict exactly how much the Compliance Board's caseload will increase as a result of the expanded jurisdiction provided for in SB 590. The recent report by the Ombudsman and Compliance Board estimates that, under SB 590, the Compliance Board will have a caseload of approximately 61 cases per year (significantly more than the 14 complaints received in fiscal year 2019) and that 2 new staff members could handle this increased caseload. That estimate, however, is based on the assumption that the Ombudsman's caseload will remain more or less the same after the changes in SB 590 are enacted, *see* PIA Final Report at 14, an assumption that might not be accurate. As the recent report points out, one of the common concerns that PIA requesters currently have about the Ombudsman's dispute resolution process is that the Ombudsman is unable to provide for any binding administrative relief. *See* PIA Final Report at 18. As a result, some requesters who do not think mediation would be helpful in their case choose not to utilize the Ombudsman at all. But if the Ombudsman becomes the first step in a process by which those requesters can obtain binding administrative relief from the Compliance Board, it is likely that more requesters will seek mediation than before. And if the Ombudsman's caseload increases, then the Compliance Board's caseload is, in turn, likely to increase even more than the substantial increase that has already been anticipated. Moreover, the bill establishes tight timelines for the Ombudsman and the Compliance Board to resolve the matters before them, which means that adequate staff support will be especially important to prevent a backlog or delays in the process.

For those reasons, the Office of the Attorney General believes that 3 new positions, not just 2, would be the minimum to adequately staff the Ombudsman and Compliance Board under the proposed changes in SB 590. Further, the Office has concerns with the conclusion in the current Fiscal Note that only one additional attorney would be needed. That conclusion may not have taken into account the level of support that will be needed for the Compliance Board's timely resolution of the many legal issues that will come before it with expanded jurisdiction, such as evaluating exceptions to disclosure. Moreover, the recommendation of the Ombudsman and Compliance Board was to leave the Office with the flexibility to hire two attorneys, rather than one attorney and an administrative staff, if necessary. In our view, it is important that, at the very least, the Office be given that flexibility.

In addition, there are a few other operational aspects of the bill that the General Assembly may wish to clarify:

- Although the bill provides that a complainant must file a complaint with the PIA Compliance Board within 45 days after a final determination by the Ombudsman that the dispute was not resolved, the bill does not include any deadline by which a party must submit a request for dispute resolution with the Ombudsman. As such, the bill could be read to allow a PIA requester or a custodian to delay seeking assistance from the Ombudsman for an extended period of time and yet still take any dispute that the

Ombudsman cannot resolve to the Compliance Board. That would stand in stark contrast to the process as it currently exists, which provides that a complainant must seek administrative review from the Compliance Board within “90 days after the action that is the subject of the complaint occurred.” Md. Code Ann., Gen. Prov. § 4-1A-05(b)(5).

- The bill is not clear about whether the new Compliance Board jurisdiction will apply to matters that are pending before the Ombudsman at the time the bill goes into effect or to PIA requests that were already submitted and responded to before the bill’s effective date. The General Assembly may wish to clarify the extent to which the bill is intended to apply retroactively.
- In some cases, the categories for reporting in proposed § 4-105 may be confusing and could lead to inconsistent reporting. For example, for the number of requests granted or denied within 10 business days, a custodian will often grant or deny part of the request within 10 business days and the rest of the request within 30 days. But it is not clear how such a matter should be reported under the language of the bill. Also, requiring custodians to generate reports on both the total number of requests granted in part and the total number of requests for which redacted records were provided could lead to confusion and inconsistent reporting, because requests where redacted records are provided are, by definition, requests that are granted in part.
- There is some ambiguity in the provisions governing the deadlines for submitting responses to the PIA Compliance Board. For example, under proposed § 4-1A-06(b)(1), a response is due within 30 days after the respondent *receives* the complaint. However, under proposed § 4-1A-06(c), if a written response is not provided within 30 days after a request for further information is *sent*, rather than received, the Board “shall decide the case on the facts before the Board.”
- In proposed § 4-1A-06(b)(2)(i), it is not clear how that provision (which allows the Compliance Board to request a response to a request for a public record) relates to the earlier provision (§ 4-1A-04(a)(3)(iv)), which already allows the Board, if it finds that a custodian failed to comply with the timelines, to order the custodian to promptly respond.
- Under proposed § 4-1A-06(b)(4), it is not clear what the bill means when it provides for the confidentiality of “any record or confidential information submitted by a custodian or an applicant under this subsection that is not a public record.” We assume that the provision is intended to provide for confidentiality of documents that are reviewed by the Compliance Board for the purposes of an in camera review, but the language leaves some ambiguity.
- Regarding proposed § 4-402(b), which generally prohibits a custodian from charging a fee if the custodian did not provide a response within the act’s time limits, it is unclear

whether those time limits include the 10-day deadline for providing a preliminary response or only the 30-day deadline for providing a final response.

In closing, the Office of the Attorney General shares the overall goal of improving compliance with the Public Information Act. As part of achieving that goal, the Office thinks that it is important to focus also on ways in which to assist custodians to locate, review, and produce documents both in a timely way and in compliance with their statutory duties. As noted in our Office's Interim Report on the Implementation of the Public Information Act at 34 (Dec. 2016), depending on the size and complexity of the request, the production of documents under the PIA can often be difficult and time-consuming. Thus, the General Assembly may wish to consider that, for many custodians, there is a need for additional resources, staff, and records management software devoted specifically to the PIA.

cc: Members of the Education, Health, and Environmental Affairs Committee

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Position: INFO



Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor
Gregory Slater
Acting Secretary

February 13, 2020

The Honorable Paul Pinsky
Chair, Education, Health, and Environmental Affairs Committee
2 West, Miller Senate Office Building
Annapolis MD 21401

RE: Letter of Information – Senate Bill 590 – Public Information Act - Revisions

Dear Chair Pinsky and Committee Members:

The Maryland Department of Transportation (MDOT) takes no position on Senate Bill 590, but offers the following information for the Committee's consideration during its deliberations.

MDOT takes seriously our commitment to being open, transparent, and collaborative with the public and communities we serve. Allowing the public to request and inspect documents under the Public Information Act (PIA) is a vital element of the public's trust in our governmental institutions. MDOT is committed to safeguarding, archiving, and maintaining public records as well as individual Personally Identifiable Information (PII), in accordance with all laws and regulations. MDOT works in good faith to provide timely and cost-efficient responses, while also balancing the legal and ethical obligations to protect personal and proprietary information. We are entrusted with millions of public records dispersed throughout the State and have established a robust records management program to maintain records while also ensuring transparency.

MDOT would like to bring three specific provisions of Senate Bill 590 to the Committee's attention. First, Section 4-105(B)(2) provides reporting data that must be measured and published. Second, Sections 4-1A-02, 4-1A-03, and 4-1A-04 expand the authority for the Compliance Board and Ombudsman. Finally, Section 4-402(2) expands the penalties and may deny employees their right to due process.

MDOT welcomes the data collection provisions in Section 4-105, which specify what data all governmental entities must track and report. Section 4-105(B)(2), provides four data points: (I) the total number of requests granted in full, to which we refer as approved; (II) the total number of requests granted in part, to which we refer as partially denied; (III) the total number of requests denied in full, to which we refer as denied; and (IV) the total number of requests for which redacted public records were provided, to which we also refer to as partially denied.

The Honorable Paul Pinsky
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In practice, if MDOT receives a single request for five total documents, three documents could be approved, one document denied, and one document redacted. Today, MDOT would consider that request partially denied. With the four dispositions provided in the legislation, there would be no consistency in data collection from request to request or government entity to entity. This may become problematic if/when the data is then analyzed and compared. Further, should the bill become effective July 1, 2020, the first report would be due July 1, 2021 and it would only include six months of data, on the calendar year. MDOT would not be able to provide a timely report on July 1, 2021 that included data up to and until June 30, 2021.

Regarding the amendments to Sections 4-1A-02, 4-1A-03, and 4-1A-04, MDOT is concerned that the proposed legislation does not account for the confidential nature of many of the records maintained by the Department. For example, MDOT has a legal responsibility to maintain the privacy of records with HIPPA and/or PII information as well as critical infrastructure and homeland security records.

Finally, MDOT has concerns about the proposed language that would subject employees acting as agents on behalf of a governmental entity to criminal misdemeanors. It is unclear how an employee would be criminally prosecuted for a violation of the proposed legislation.

The Maryland Department of Transportation respectfully requests the Committee consider this information as it deliberates Senate Bill 590.

Respectfully submitted,

Jeff Tosi
Director of Government Affairs
Maryland Department of Transportation
410-841-2850