

Written Testimony on **HB0344**: Open Meetings Act – Requirements for State Agencies and Local Boards of Elections (Maryland Transparency Act of 2021)

I support this bill with amendments

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In summary, I support this bill because I think the Maryland public should have much better and quicker access to the complete, unfiltered discussions of the open meetings of all Maryland State Agencies and Local Boards of Elections. I have no problems with it as-is. I think an amendment could make it even better, though. Here I first describe that amendment and my reasoning behind proposing it; then I discuss more fully my reasons for supporting the provisions that are already in the bill, along with a little bit of extra information on my motivation for proposing the amendment.

Proposed Amendment

I've noticed that of all of a number of Maryland State Agency websites I've looked at, on the web pages where meeting notices, agendas, and minutes are posted, only one page that I've found, the Board of Nursing's homepage, includes a note saying something to the effect that "Meetings are held in accordance with the Maryland Open Meetings Act, and meeting notices, agendas, minutes, and other meeting materials are posted in accordance with this Act. See the Maryland Attorney General's Open Meetings Act site (include hyperlink: <https://www.marylandattorneygeneral.gov/Pages/OpenGov/OpenMeetings/default.aspx>) for more information". The other agencies' websites that I've looked at don't mention and refer to the Open Meetings Act (OMA) at all, let alone provide a link to the Attorney General's OMA website.

I think each Maryland State and Local Agency should be required to include a note similar to the one in the previous paragraph on a part of their website where notices and agendas and/or meeting minutes are posted, along with a link to the Attorney General's Open Meetings Act site. (A detail: I've noticed some Agencies post notices and agendas on one webpage, but archive previous minutes on separate ones—I think it'd be adequate to post the note on either one, it doesn't have to be on both).

I think that adding these notes that specifically name and refer the OMA to all of these webpages will promote greater awareness of the Act, including what are and what are not violations of it and what should be expected under it generally, amongst the Maryland public. Adding them may also give Agencies at least a little more incentive to fully comply with the Act as well.

It is true that numerous Marylanders still find out about the Act's existence and that many of them file complaints with the Open Meetings Compliance Board, and that when a member of the public sees meeting notices, agendas, and minutes being posted, it's intuitive to them that some state law quite likely requires and regulates the postings. Nonetheless, I still think it would be an improvement to raise even more public awareness of the Open Meetings Act by referencing it by name, and making further information about it readily available. For instance, I note that under the current OMA, members of the public are allowed to view some meeting materials before they are posted online and some materials that are not even expected to be posted online at any point, such as minutes of past agency meetings

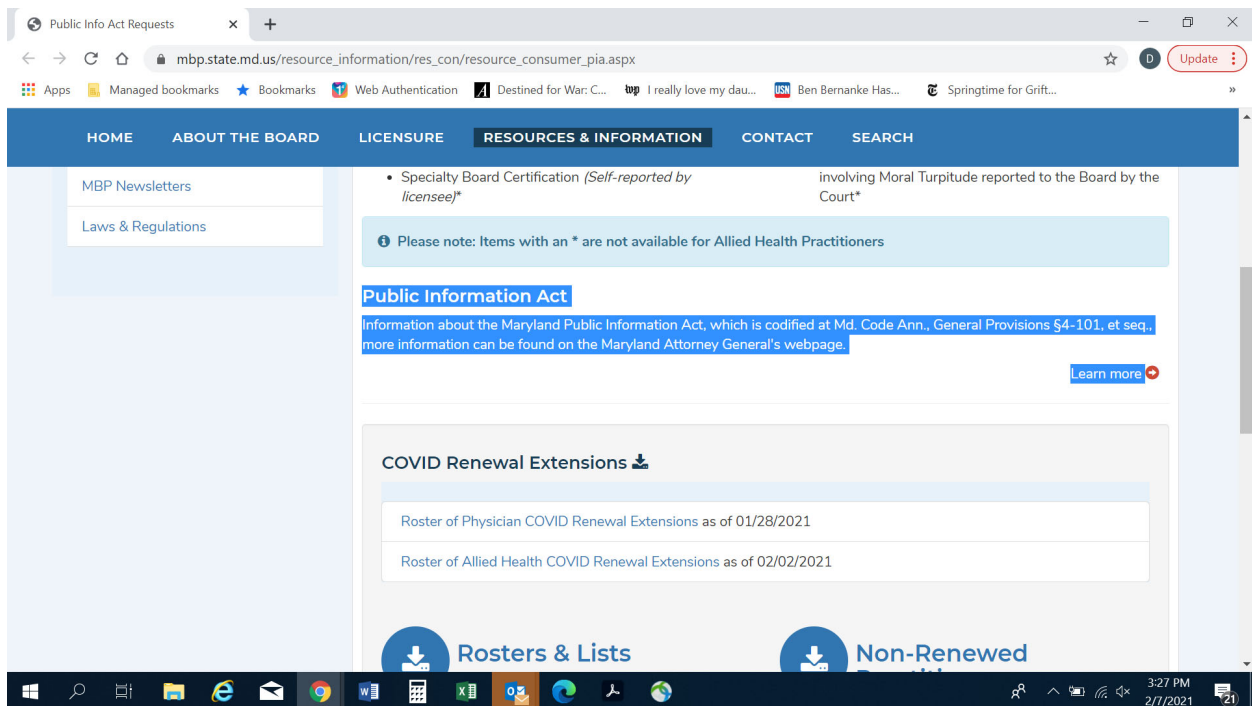
that have been approved but not posted online. Members of the public are entitled to at least view copies of these in-person at the offices of the agencies that held the meetings described in the minutes. However, persons who have not familiarized themselves with the OMA likely often do not know this. This shows that some aspects of the OMA may not always be obvious to everyone in the public. So, I suggest that an amendment to add a provision to the Open Meetings Act about including these notes and links be added to HB0344.

As background, I'll mention that this idea came to me in large part because I noticed the Maryland Board of Physicians' Public Information Act Requests page (https://www.mbp.state.md.us/resource_information/res_con/resource_consumer_pia.aspx) includes a note that says:

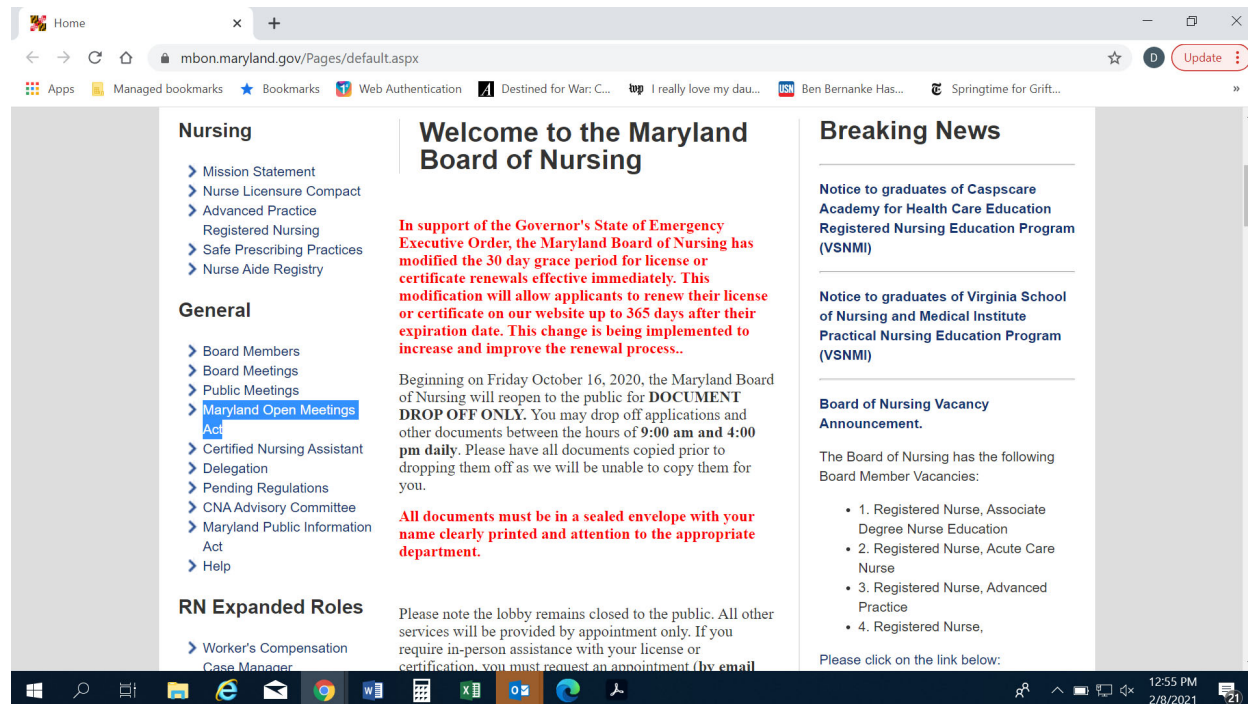
"Public Information Act: Information about the Maryland Public Information Act, which is codified at Md. Code Ann., General Provisions §4-101, et seq., more information can be found on the Maryland Attorney General's webpage. [Learn more](#)"

See screenshot below; a link to the Attorney General's Public Information Act page is embedded in the "Learn more" text. I think that that reference and, especially, link are a good thing to have on that page about the Public Information Act. However, again, I've only come across one note on one state agency webpage to that effect about the Open Meetings Act, and the materials and access to meetings provided under this Act.

Screenshot of relevant section of Board of Physician's Public Information Act (PIA) Request page; blue text is the most relevant text, which I highlighted:



While I found that the Board of Physicians’ “Board Meetings” page does not reference the Open Meetings Act, I did find that one of the Department of Health’s medical professional licensing board’s webpages does. Namely the Board of Nursing’s website’s homepage, <https://mbon.maryland.gov/Pages/default.aspx>. This page does provide a link to the Maryland Attorney General’s Open Meetings Act website, right below a link to this Board’s “Public Meetings” page. The placement of the link and how the Maryland Open Meetings Act is explicitly named make it clear that this Act pertains to this Board’s meetings; see the highlighted part in the screenshot below:



This basically concludes my discussion of my proposed amendment to this bill. The final thing I’ll mention here is just a list of the State Agencies whose Meeting Notices, Agendas, and Minutes webpages I looked over in my search to see if any of them currently refer to the Open Meetings Act in any way, and mention at all that meetings are held in accordance with this Act, and that meeting materials, notices, etc. are also posted in accordance with it. Again, I found that only one of those listed below does this at this time. (A note: perhaps such references and mentions of the Act are there on one or more of the other webpages, but if so, I didn’t spot them, and I even used my web browser’s “Find” search tool to look for such references).

- The Maryland Board of Physicians website, despite having that reference and link to the Attorney General’s PIA page on its own PIA page described above, doesn’t seem to mention the Open Meeting Act (OMA) anywhere or link to the Attorney General’s OMA page anywhere on its “Board Meetings” pages (https://www.mbp.state.md.us/board_meetings.aspx)
- I checked several other of the Maryland Department of Health’s Boards’ websites. (The Boards are listed at <https://health.maryland.gov/Pages/boards.ASPX> , which provides links to their

pages). Of the several I checked, only the Board of Nursing's website references and links to the OMA (see screenshot above).

- State Ethics Commission: no mention of the OMA on its homepage where meeting notices and agendas are posted (<https://ethics.maryland.gov/>), or its Meeting Minutes page (<https://ethics.maryland.gov/meeting-minutes/>).
- Maryland Police Training and Standards Commission: no mention of OMA in the "Commission Meetings" part at <https://mdle.net/standards.htm>. (Note: if one clicks on the blue text that says "Commission Meetings", that reveals additional text with some information on these meetings).
- Maryland State Board of Veterinary Medical Examiners: No mention of the OMA on their "Board Members & Meetings" page: https://mda.maryland.gov/vetboard/Pages/board_members.aspx
- Maryland Department of Labor, Licensing, and Regulation: links to all of this Department's professional licensing boards' webpages that have each board's meeting agendas and minutes are posted on a central Department "Agendas and Minutes of Public Meetings" page, <https://www.dllr.state.md.us/license/min/>. Looking at all of these, I see did not see any reference to the OMA.
- The Maryland Department of Transportation's "Public Meetings" pages (see <https://www.mdot.maryland.gov/tso/pages/Index.aspx?PageId=142>) don't seem to make any mention of the Open Meetings Act.

Why I support the provisions that are already in the current version of HB0344: State Agencies should not have indefinitely long amounts of time to post meeting minutes online

In detail on this other issue, I particularly like that this Bill changes an aspect of the current Open Meetings Act, as currently interpreted by the Maryland Open Meetings Compliance Board, that I think is problematic. Namely, how the current OMA grants an Agency an indefinitely long time to post meeting minutes online, even after the minutes have been approved. A recent Open Meetings Compliance Board opinion describes this feature of the current Act¹. Again, I think this is problematic; at this point, my sense is that all State (if not local) Agencies currently have or easily could have access to websites for posting meeting minutes, agendas, notices and other materials online. So, there's no reason why they cannot be required to post meeting minutes online very shortly after adopting them.

Yet, I know of at least one State Agency – the State Board of Veterinary Medical Examiners, whose activities I often follow given that I don't like how they handled a complaint I filed with them about my

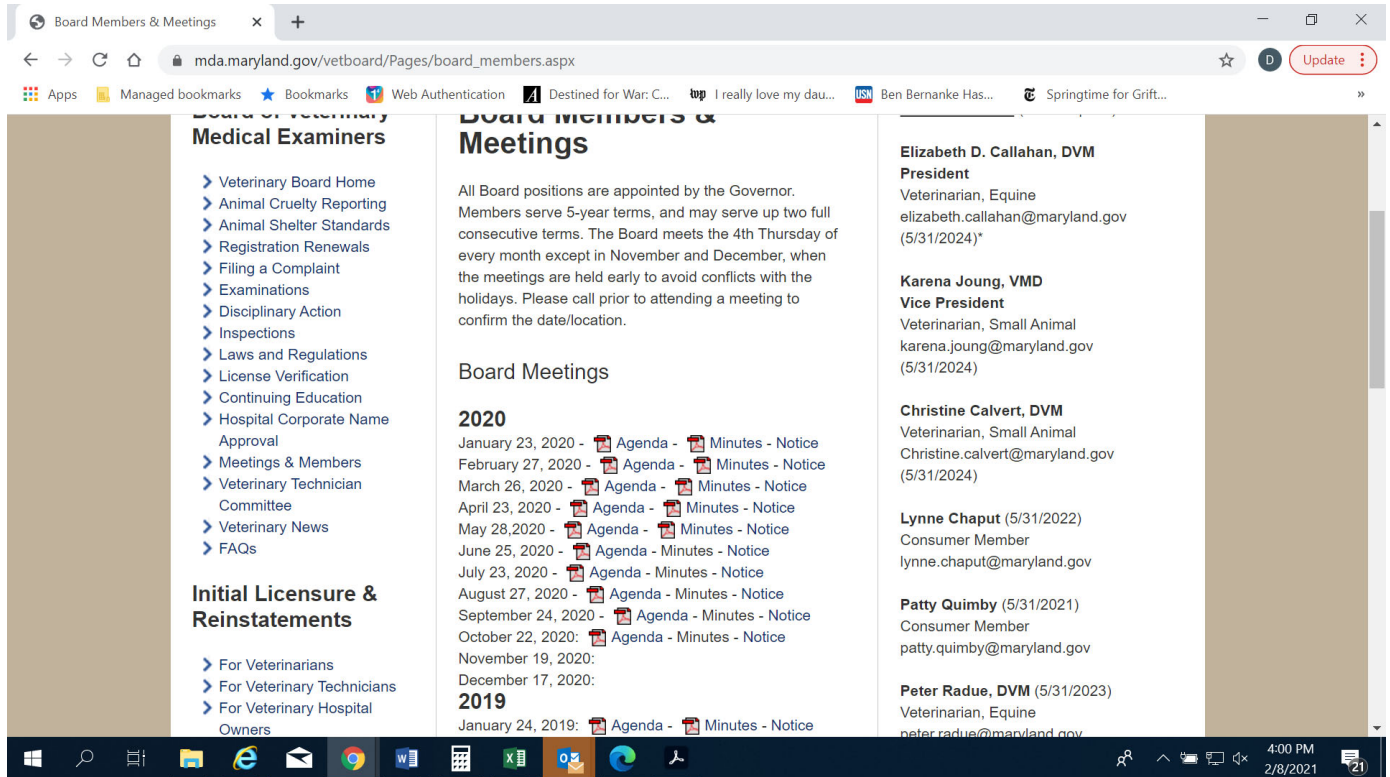
¹ See <https://www.marylandattorneygeneral.gov/Opinions%20OMCB%20Documents/Vol14/14OMCB019.pdf>, specifically the section on "1. Allegation that the Authority is not posting its online minutes soon enough" on pages 2 to 3 of this PDF file. In particular, the part that says "We therefore do not interpret (OMA) § 3-306(e) to impose on the public bodies for which online posting is "practicable"—those that acquired the capability—a special deadline for the publication of their minutes. Such an interpretation might discourage public bodies with limited staff from establishing a website in the first place and thus would not serve the purposes of the Act."

former veterinarian, and how I don't like how some of their regulations are written, and so forth – that generally posts meeting minutes online only several months after the meetings in question. Delays of around six months are routine, and I've seen one delay that was eleven months (documentation of these delays is provided below). This Board does this, despite all (I believe) of the meeting minutes they have posted to date claiming that the minutes were adopted at the next month's meeting.

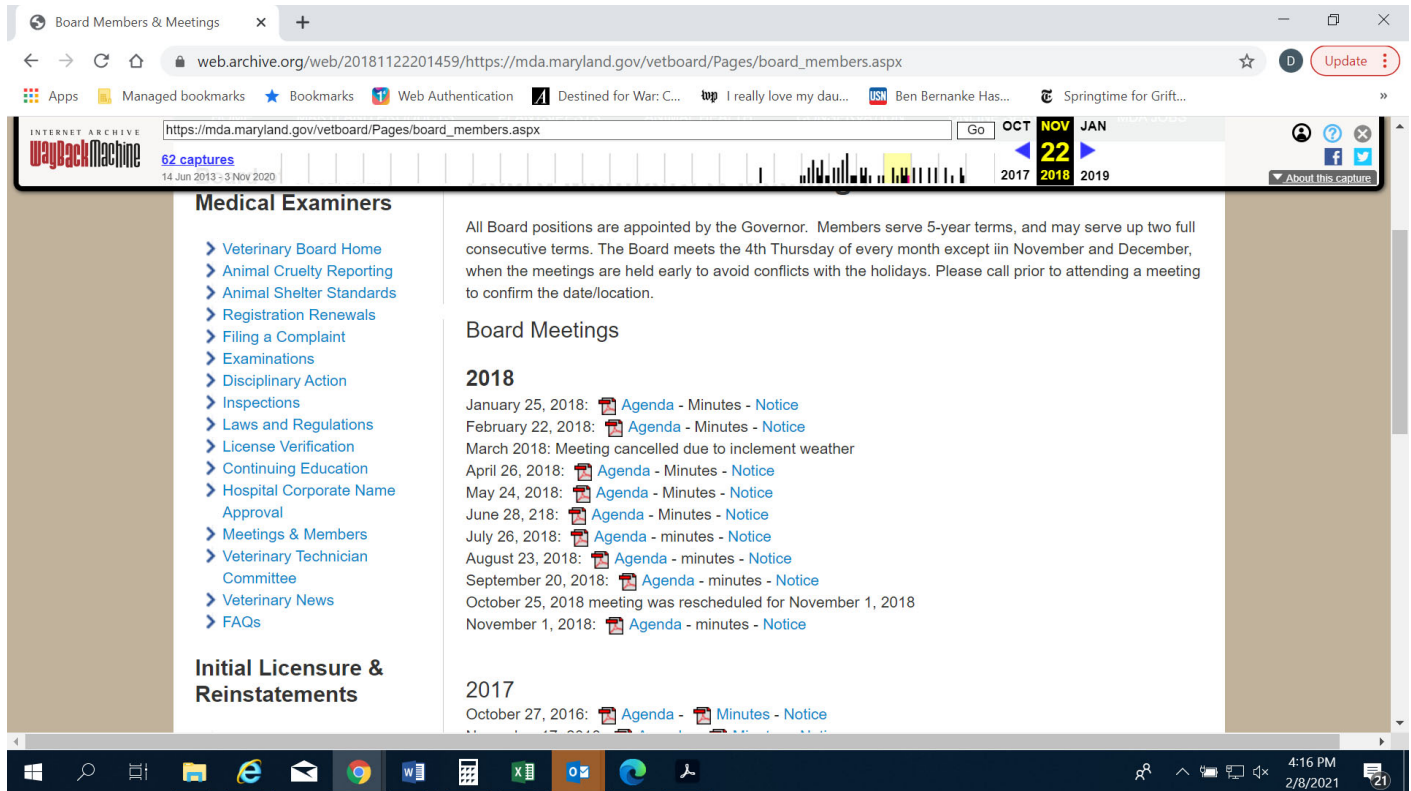
I think that when a State Agency does post not minutes of its meetings for long periods of calendar time after the meetings occurred (and/or after multiple other meetings have already occurred), it can make the public start to have reasonable doubts and questions about the candor and completeness of the meeting minutes. This is even more true when one meeting's minutes say that a previous meeting's minutes have been approved and adopted, but these allegedly finalized, approved minutes are not posted online for multiple weeks or months after they are said to have been adopted. In the case of Veterinary Board, I'm personally suspicious that this Board tends to hold on to tentative and draft versions of its minutes for a long time before posting them so that it can spend a long time working on and considering what to put in the final publicly released minutes, and that it does this in order to omit negative information and content about the Board, and information and content that might be construed as negative by those who'd like to make changes to the Board and its regulations and procedures, from the final publicly released meeting minutes.

I will provide some evidence that my suspicions are arguably warranted, but first I note that having read about the OMA myself now, I know that if an agency has approved minutes but not yet posted them online, under the current OMA a member of the public is still allowed to inspect them in person at a visit to the public body's office. (The Open Meetings Compliance Board opinion cited in the footnote above mentions this). However, someone who is unaware of the OMA's existence or who has not yet had time to learn about the OMA in detail could see a Meeting Minutes website like that below—a screenshot of the Veterinary Board's website as of February 8, 2021—and not realize that they are in fact permitted to see meeting minutes that have been approved but not yet posted. (In this instance, this would be this Board's June-December 2020 Minutes—again, to the best of my knowledge and recollection, all the minutes this Board has posted to date all say that the minutes of one meeting get approved at the next monthly meeting.) I think this helps illustrate my motivations behind proposing the Amendment described above: if members of the public saw mention and reference to the OMA and the Attorney General's OMA website on pages like this, they'd be more likely to realize that they can request things like this. (And, also, they are more likely to realize that there's an apparent OMA violation here on this page, given that the Board did not post agendas for its November and December 2020 and January 2021 meetings. Also, possibly another set of violations, given that the Board did not post links to full notices about these meetings here either, although notices were posted in the Maryland Department of Agriculture's Newsroom Press Releases page at <https://news.maryland.gov/mda/category/press-release/>.)

Recent Screenshot of the Veterinary Board's website (4:00 pm on February 8, 2021)



The Maryland Veterinary Board taking multiple months after meetings to post minutes is not unique to 2020, when the COVID pandemic has been occurring; in 2018, this Board was even slower. This is a screenshot of the Board's Meetings and Members page as of November 22, 2018, taken from the Internet Archive Wayback Machine:



No minutes from any monthly meeting in 2018 had been posted as of November 22, 2018. If one downloads these minutes now and checks the file creation date on the PDFs (Under File => Properties=>Description), one finds out the January - May 2018 ones were posted to the website on December 26, 2018; the June 2018 ones were posted on January 17, 2019; and the July - December ones were posted on March 11, 2019.

Again, my suspicions are that this Board is using the provision of the current OMA that grants them indefinitely long periods of time to post meeting minutes online in order to spend a lot of time wording and writing the minutes in ways that keep negative and arguably negative information about this Board and its activities out of the minutes. I've looked through many of these minutes, and I found that the minutes from 2016 and 2017 tend to be longer than the more recent ones, and also sometimes include discussions of whether the Board's processes for assessing and ruling on complaints need to be improved, and whether they recently have been improved. (See the December 2016, March 2017, and April 2017 Minutes). I haven't found such discussions in the more recent minutes from 2018 and later, though, minutes which also tend to be shorter, and include less and less information on the closed meetings to assess complaints (such as which complaints were before which Board Team, and how long the Board met during the closed sessions to discuss complaints. I don't believe that excluding that information is actually an OMA violation, but the Board does seem to have learned more about the current OMA's provisions and then re-structured their meetings in order to omit information from their minutes on how much time they spend each month in closed administrative sessions discussing complaints—which in my view has been embarrassingly short. Now that they fully adjourn their open

meetings to move to closed administrative sessions, rather than recessing the open meetings to have closed sessions in the middle, they don't have to say anything about how long the closed sessions lasted, though).

In 2018, the Veterinary Board underwent a Preliminary Sunset Evaluation (<http://dls.maryland.gov/pubs/prod/SunsetRevAgri/VetMedExams/Prelim-Veterinary-Medical-Examiners-2018.pdf>); in 2019, a Full Evaluation was conducted, in large part because several pet-owner members of the public raised concerns with DLS about this Board's complaint and disciplinary process (pages 5, 9-10). I suspect this motivated the Board to start taking long amounts of time, particularly in 2018, to post its meeting minutes online, and to be much more careful about what it included in the minutes and how it was worded. In fact, the Board's December 2018 meeting minutes say of the DLS Sunset Evaluations that "She (Exec. Director Ms. Orlando) thanked Board members for their help in reviewing the draft response to the DLS report on such a tight deadline. She noted that it was likely DLS would move forward with a full sunset review since the Board has not had one in 20 years" (page 3)—as opposed to the full truth, that the Board hadn't had a full Sunset Evaluation in 30 years not 20, and moreover that the main reason for the full Sunset Evaluation was the concerns raised by pet owners with DLS. Also, interestingly to me, despite some of the Board's minutes from 2016 and 2017 stating that some of the veterinarian members of the Board themselves were raising some questions at the time in the meetings about whether their complaint assessment and disciplinary process should be improved, when it came time to write their response to the DLS Preliminary Sunset Evaluation, (in my mind) they expressed great confidence in their processes, and no meaningful doubts.