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**STATE OF MARYLAND
OPEN MEETINGS COMPLIANCE BOARD**

February 11, 2021

The Honorable Shane E. Pendergrass, Chair
Health and Government Operations Committee
House Office Building, Room 241
6 Bladen Street
Annapolis, MD 21401

Re: House Bill 344 – Maryland Transparency Act of 2021 (cross-filed with Senate Bill 72)
Position: Neither favorable nor unfavorable (informational only)

Dear Chair Pendergrass:

As Chair of the Open Meetings Compliance Board, I am writing to convey the Board's position regarding House Bill 344. House Bill 344 would amend the Open Meetings Act by altering, for certain public bodies, the requirement that a public body make a meeting agenda available prior to each open meeting, and the requirement that the public body post and archive meeting minutes after each open meeting. The substantive amendments in House Bill 344 would apply to each public body that is a "State agency in the executive branch or local board of elections."

The Open Meetings Act, at § 3-302.1 of the General Provisions Article, currently requires each public body, prior to each open meeting, to make available to the public an agenda for the meeting no later than 24 hours before the meeting. A public body subject to House Bill 344 would instead be required to post an agenda and all meeting materials on its website at least 48 hours in advance of each open meeting, except in cases of emergency.

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The Act, at § 3-306 of the General Provisions Article, also currently requires a public body to prepare minutes of each open meeting “as soon as practicable,” with the option of treating a “live and archived video or audio stream[]” as the minutes of the meeting. The public body must retain the minutes for five years and must post them online “[t]o the extent practicable.” House Bill 344 would require each public body within its scope to offer live video or audio streaming of each portion of a meeting that is held in open session; to post an unedited, archived recording of the meeting on its website for a minimum of one year; to discuss and approve meeting minutes “as soon as practicable and in a timely manner”; and to post meeting minutes on its website within two days after approval, and keep them there for a minimum of five years. The bill also allows the public body to post a “searchable transcript” of the recorded meeting in lieu of written minutes.

Although the Compliance Board neither supports nor opposes House Bill 344, we do wish to convey two concerns with the legislation as currently drafted. First, as noted, House Bill 344 would apply only to “a public body that is a State agency in the Executive Branch” and local election boards. The term “State agency in the Executive Branch” is undefined in the bill, and we are not aware of a definition of that term elsewhere in the Maryland Code. Accordingly, the Board is concerned that House Bill 344 could create confusion as to which public bodies are covered by its terms.

Second, the Board is concerned about the bill’s provision permitting a public body to post a “searchable transcript” of an open meeting in lieu of minutes. This provision could substantially increase the burden on the Board in reviewing complaints that a public body has violated this provision. Additionally, the proposed bill lacks a procedure for correcting errors in transcription. This lack of a procedure for corrections is particularly worrisome given that the bill requires the archived recording to be “unedited.”

Thank you for considering the positions of the Compliance Board on this bill. The minutes of the meeting at which the Compliance Board discussed the open meetings bills pending at the time will be posted to the Board’s website as soon as practicable.

Very truly yours,

Lynn Marshall /tc

Lynn Marshall, Esquire
Chair
Open Meetings Compliance Board

cc: Open Meetings Compliance Board