

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 363

(Senator Kagan, *et al.*)

Education, Health, and Environmental Affairs

Health and Government Operations

State Government - Open Meetings - Requirements and Application of Open
Meetings Act (Maryland State Agency Transparency Act)

This bill requires several State agencies (the Maryland Stadium Authority (MSA); the State Board of Elections (SBE); the Emergency Number Systems Board (ENSB) within the Department of Public Safety and Correctional Services; the Public Service Commission (PSC); and the Maryland Transportation Authority (MDTA)) to (1) post open meeting agendas and minutes online within specified timeframes; (2) make publicly available live video streaming of open sessions, as specified; and (3) maintain meeting minutes and recordings, as specified.

Fiscal Summary

State Effect: Nonbudgeted expenditures for MSA and special fund expenditures for ENSB increase by an estimated \$5,000 to \$10,000 *each* in FY 2021 only. Nonbudgeted expenditures for MDTA increase by an estimated \$5,000 in FY 2021 only. Any future year expenditures are minimal and absorbable within existing resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Each agency specified above must make publicly available on its website (1) each open meeting agenda at least 48 hours in advance or, if the meeting is being held due to an emergency, natural disaster, or any other unanticipated situation, as far in advance

as practicable; (2) meeting minutes from the portions of a meeting that were held in open session within two business days after the minutes are approved; and (3) live video streaming of each portion of a meeting that is held in open session. For MDTA, live video streaming must be provided only for each open meeting held at its headquarters or any other location where it held at least 10 meetings during the immediately preceding calendar year. If MSA meets by telephone conference, it must provide live audio streaming of each portion of the meeting held in open session.

In addition, each specified agency, with the exception of MDTA, must maintain meeting minutes on its website for at least five years and maintain complete and unedited archived video recordings (and, for MSA, any audio recordings) of meetings on its website for at least one year. (Under current law, SBE must make available archived video recordings for at least *four* years.) MDTA must maintain archived video recordings on its website for at least five years. The Department of Information Technology (DoIT) must provide MDTA with the technical staff, support, and equipment necessary to livestream its open meetings.

Current Law/Background:

Open Meetings Act

Under the Open Meetings Act, with limited exceptions, a public body must (1) meet in open session in locations reasonably accessible to potential attendees and (2) provide reasonable advance notice of the time and location of meetings, including, when appropriate, whether any portion of a meeting will be in closed session. A “public body” is any entity that (1) consists of at least two individuals and (2) is created by the Maryland Constitution; a State statute; a county or municipal charter; a memorandum of understanding or a master agreement to which a majority of the county boards of education and the Maryland State Department of Education are signatories; an ordinance; a rule, resolution, or bylaw; or an executive order of the Governor or of the chief executive authority of a political subdivision. Exclusions from the definition of “public body” include juries, the Governor’s cabinet and Executive Council, judicial nominating commissions, and single-member entities, among others.

Agendas: Generally, a public body must make an agenda available to the public prior to meeting in an open session. The agenda must include known items of business or topics to be discussed at the meeting and indicate whether the public body expects to close any portion of the meeting in accordance with State law. The public body is not required to include in the agenda information pertaining to a closed portion of the meeting. If a public body is unable to comply with specified deadlines for the release of a meeting agenda because the meeting is scheduled in response to an emergency, a natural disaster, or any other unanticipated situation, the public body must make available, on request, an agenda of the meeting within a reasonable time after the meeting occurs.

Minutes: As soon as practicable after an open session, a public body must prepare minutes of the meeting. The minutes must reflect each item that the public body considered, the action it took on each item, and each vote that was recorded. If a public body meets in closed session, the minutes for a public body's next open session must include a summary that includes specified information about the proceedings of the closed meeting. A public body need not prepare written minutes of an open session if (1) live and archived video or audio streaming of the open session is available or (2) if the public body votes on legislation and the individual votes taken by each participating member of the public body are promptly posted on the Internet.

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

State Board of Elections

SBE is a five-member board responsible for (1) establishing policies governing the administration of elections; (2) managing and coordinating statewide elections systems, including the voting system and voter registration system; and (3) supervising and supporting local boards of elections.

Chapter 486 of 2019 required SBE, in consultation with DoIT, to make publicly available on the Internet (1) each meeting agenda, made available at least 24 hours in advance of each meeting; (2) live video streaming of each open meeting of SBE; and (3) a complete, unedited archived video recording of each open meeting for a minimum of four years after the date of the meeting. In addition, the Act required SBE to prepare written minutes of each meeting as soon as practicable after the meeting. Further, the Act required DoIT to provide technical staff, support, and equipment necessary to stream live video of the open meetings of SBE. The board advises that it paid \$10,000 for the necessary equipment and continues to pay \$300 per month for the streaming service.

Maryland Stadium Authority

MSA was established in 1986 as an independent unit in the Executive Department responsible for the construction, operation, and maintenance of facilities for use by professional baseball and/or football teams. MSA's authority has since been expanded further to include a variety of State and local projects. MSA may manage any type of construction project for local governments and State agencies upon request and approval by the General Assembly.

Emergency Number Systems Board

ENSB was established in 1979 to oversee a statewide 9-1-1 system. The 17-member board, housed within DPCSC, meets monthly in public session.

Public Service Commission

The Maryland Public Service Commission, established in 1910, regulates public service companies (*i.e.*, public utilities) and is charged with ensuring an adequate and reliable supply of utility services at just and reasonable rates. PSC currently provides live video streaming and archived video of public meetings online.

Maryland Transportation Authority

MDTA, established in 1971, is responsible for constructing, managing, operating, and improving the State's toll facilities and financing new revenue-producing transportation projects. MDTA is governed by nine individuals appointed by the Governor with the advice and consent of the Senate. The Secretary of Transportation serves as MDTA's chair.

State Expenditures: PSC and SBE advise that they currently provide live video streaming of open meetings and make archived video recordings available online. Accordingly, PSC and SBE can implement the bill's requirements with existing budgeted resources.

MSA and ENSB, however, advise that they must purchase and install video-streaming equipment in order to comply with the bill; estimated per-agency equipment costs range between \$5,000 and \$10,000. Accordingly, nonbudgeted expenditures for MSA and 9-1-1 Trust Fund expenditures for ENSB increase by at an estimated \$5,000 to \$10,000 *each* in fiscal 2021 only.

MDTA advises that it, too, must install live video production equipment at an estimated \$5,000 per-facility cost. MDTA has advised for similar legislation that it generally does not hold 10 or more meetings at any of its meeting locations other than its headquarters. Accordingly, nonbudgeted expenditures for MDTA increase by an estimated \$5,000 in fiscal 2021 to install video equipment at its headquarters.

Streaming and software licensing costs for MSA, ENSB, and MDTA continue in future years; however, it is assumed that any such costs are minimal and absorbable within existing resources.

It is assumed that DoIT operations and finances are not materially affected.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 421 (Delegate Korman, *et al.*) - Health and Government Operations.

Information Source(s): Department of Public Safety and Correctional Services; Maryland Department of Transportation; Maryland State Board of Elections; Public Service Commission; Maryland Stadium Authority; Department of Legislative Services

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