

HOUSE BILL 246

P1

2lr0716

By: **Delegates Carr and Lehman**

Introduced and read first time: January 13, 2022

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 15, 2022

CHAPTER _____

1 AN ACT concerning

2 **Open Meetings Act – Notices, Closed Sessions, and Minutes – Retention Periods,**
3 **Online Posting, and Public Inspection**

4 FOR the purpose of altering the period of time a public body is required to retain a certain
5 notice and certain written closing statement under the Open Meetings Act; requiring
6 a public body, to the extent practicable, to post a certain written closing statement
7 online; requiring a public body, if it does not post certain minutes or recordings or a
8 certain written closing statement online, to provide the minutes, recordings, or
9 statement on request to a requestor in a certain manner and within a certain period
10 of time; and generally relating to the Open Meetings Act.

11 BY repealing and reenacting, with amendments,
12 Article – General Provisions
13 Section 3–302, 3–305, and 3–306
14 Annotated Code of Maryland
15 (2019 Replacement Volume and 2021 Supplement)

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

18 **Article – General Provisions**

19 3–302.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (a) Before meeting in a closed or open session, a public body shall give reasonable
2 advance notice of the session.

3 (b) Whenever reasonable, a notice under this section shall:

4 (1) be in writing;

5 (2) include the date, time, and place of the session; and

6 (3) if appropriate, include a statement that a part or all of a meeting may
7 be conducted in closed session.

8 (c) A public body may give the notice under this section as follows:

9 (1) if the public body is a unit of State government, by publication in the
10 Maryland Register;

11 (2) by delivery to representatives of the news media who regularly report
12 on sessions of the public body or the activities of the government of which the public body
13 is a part;

14 (3) if the public body previously has given public notice that this method
15 will be used:

16 (i) by posting or depositing the notice at a convenient public location
17 at or near the place of the session; or

18 (ii) by posting the notice on an Internet website ordinarily used by
19 the public body to provide information to the public; or

20 (4) by any other reasonable method.

21 (d) A public body shall keep a copy of a notice provided under this section for at
22 least [1 year] **3 YEARS** after the date of the session.

23 3-305.

24 (a) The exceptions in subsection (b) of this section shall be strictly construed in
25 favor of open meetings of public bodies.

26 (b) Subject to subsection (d) of this section, a public body may meet in closed
27 session or adjourn an open session to a closed session only to:

28 (1) discuss:

1 (i) the appointment, employment, assignment, promotion,
2 discipline, demotion, compensation, removal, resignation, or performance evaluation of an
3 appointee, employee, or official over whom it has jurisdiction; or

4 (ii) any other personnel matter that affects one or more specific
5 individuals;

6 (2) protect the privacy or reputation of an individual with respect to a
7 matter that is not related to public business;

8 (3) consider the acquisition of real property for a public purpose and
9 matters directly related to the acquisition;

10 (4) consider a matter that concerns the proposal for a business or industrial
11 organization to locate, expand, or remain in the State;

12 (5) consider the investment of public funds;

13 (6) consider the marketing of public securities;

14 (7) consult with counsel to obtain legal advice;

15 (8) consult with staff, consultants, or other individuals about pending or
16 potential litigation;

17 (9) conduct collective bargaining negotiations or consider matters that
18 relate to the negotiations;

19 (10) discuss public security, if the public body determines that public
20 discussion would constitute a risk to the public or to public security, including:

21 (i) the deployment of fire and police services and staff; and

22 (ii) the development and implementation of emergency plans;

23 (11) prepare, administer, or grade a scholastic, licensing, or qualifying
24 examination;

25 (12) conduct or discuss an investigative proceeding on actual or possible
26 criminal conduct;

27 (13) comply with a specific constitutional, statutory, or judicially imposed
28 requirement that prevents public disclosures about a particular proceeding or matter;

29 (14) discuss, before a contract is awarded or bids are opened, a matter
30 directly related to a negotiating strategy or the contents of a bid or proposal, if public

1 discussion or disclosure would adversely impact the ability of the public body to participate
2 in the competitive bidding or proposal process; or

3 (15) discuss cybersecurity, if the public body determines that public
4 discussion would constitute a risk to:

5 (i) security assessments or deployments relating to information
6 resources technology;

7 (ii) network security information, including information that is:

8 1. related to passwords, personal identification numbers,
9 access codes, encryption, or other components of the security system of a governmental
10 entity;

11 2. collected, assembled, or maintained by or for a
12 governmental entity to prevent, detect, or investigate criminal activity; or

13 3. related to an assessment, made by or for a governmental
14 entity or maintained by a governmental entity, of the vulnerability of a network to criminal
15 activity; or

16 (iii) deployments or implementation of security personnel, critical
17 infrastructure, or security devices.

18 (c) A public body that meets in closed session under this section may not discuss
19 or act on any matter not authorized under subsection (b) of this section.

20 (d) (1) Unless a majority of the members of a public body present and voting
21 vote in favor of closing the session, the public body may not meet in closed session.

22 (2) Before a public body meets in closed session, the presiding officer shall:

23 (i) conduct a recorded vote on the closing of the session; and

24 (ii) make a written statement of the reason for closing the meeting,
25 including a citation of the authority under this section, and a listing of the topics to be
26 discussed.

27 (3) If a person objects to the closing of a session, the public body shall send
28 a copy of the written statement to the Board.

29 (4) The written statement shall be a matter of public record.

30 (5) A public body shall keep a copy of the written statement for at least [1
31 year] **3 YEARS** after the date of the session.

1 **(6) (I) TO THE EXTENT PRACTICABLE, A PUBLIC BODY SHALL POST**
2 **ONLINE THE WRITTEN STATEMENT REQUIRED TO BE KEPT UNDER PARAGRAPH (5)**
3 **OF THIS SUBSECTION.**

4 **(II) IF A PUBLIC BODY DOES NOT POST A WRITTEN STATEMENT**
5 **ONLINE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE PUBLIC BODY SHALL**
6 **PROVIDE AN ELECTRONIC COPY OF THE WRITTEN STATEMENT, ON REQUEST, TO A**
7 **REQUESTOR WITHIN ~~2~~ 5 BUSINESS DAYS OF RECEIVING THE REQUEST.**

8 3-306.

9 (a) This section does not:

10 (1) require any change in the form or content of the Journal of the Senate
11 of Maryland or Journal of the House of Delegates of Maryland; or

12 (2) limit the matters that a public body may include in its minutes.

13 (b) (1) Subject to paragraphs (2) and (3) of this subsection, as soon as
14 practicable after a public body meets, it shall have minutes of its session prepared.

15 (2) A public body need not prepare minutes of an open session if:

16 (i) live and archived video or audio streaming of the open session is
17 available; or

18 (ii) the public body votes on legislation and the individual votes
19 taken by each member of the public body who participates in the voting are posted promptly
20 on the Internet.

21 (3) The information specified under paragraph (2) of this subsection shall
22 be deemed the minutes of the open session.

23 (c) (1) The minutes shall reflect:

24 (i) each item that the public body considered;

25 (ii) the action that the public body took on each item; and

26 (iii) each vote that was recorded.

27 (2) If a public body meets in closed session, the minutes for its next open
28 session shall include:

29 (i) a statement of the time, place, and purpose of the closed session;

- 1 (ii) a record of the vote of each member as to closing the session;
- 2 (iii) a citation of the authority under § 3–305 of this subtitle for
3 closing the session; and
- 4 (iv) a listing of the topics of discussion, persons present, and each
5 action taken during the session.

6 (3) (i) A session may be recorded by a public body.

7 (ii) Except as otherwise provided in paragraph (4) of this subsection,
8 the minutes and any recording of a closed session shall be sealed and may not be open to
9 public inspection.

10 (4) The minutes and any recording shall be unsealed and open to inspection
11 as follows:

12 (i) for a meeting closed under § 3–305(b)(5) of this subtitle, when the
13 public body invests the funds;

14 (ii) for a meeting closed under § 3–305(b)(6) of this subtitle, when the
15 public securities being discussed have been marketed; or

16 (iii) on request of a person or on the public body's own initiative, if a
17 majority of the members of the public body present and voting vote in favor of unsealing
18 the minutes and any recording.

19 (d) Except as provided in subsection (c) of this section, minutes of a public body
20 are public records and shall be open to public inspection during ordinary business hours.

21 (e) (1) A public body shall keep a copy of the minutes of each session and any
22 recording made under subsection (b)(2)(i) or (c)(3)(i) of this section for at least 5 years after
23 the date of the session.

24 (2) (I) To the extent practicable, a public body shall post online the
25 minutes or recordings required to be kept under paragraph (1) of this subsection.

26 (II) **IF A PUBLIC BODY DOES NOT POST MINUTES OR**
27 **RECORDINGS ONLINE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE PUBLIC**
28 **BODY SHALL PROVIDE AN ELECTRONIC COPY OF THE MINUTES OR RECORDING, ON**
29 **REQUEST, TO A REQUESTOR WITHIN:**

30 **1. ~~5~~ BUSINESS DAYS OF RECEIVING THE REQUEST; OR**

1 2. IF THE MINUTES HAVE NOT BEEN APPROVED BY THE
2 PUBLIC BODY AT THE TIME OF THE REQUEST, WITHIN 5 BUSINESS DAYS AFTER THE
3 MINUTES ARE APPROVED BY THE PUBLIC BODY.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2022.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.