

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 269

(Senator Kagan)

Education, Health, and Environmental Affairs

Health and Government Operations

Open Meetings Act - Application and Enhanced Requirements (Maryland State
Agency Transparency Act of 2022)

This bill (1) repeals exemptions from Open Meetings Act (OMA) requirements for specified independent and regional development units (the Maryland Economic Development Corporation (MEDCO); Maryland Agricultural and Resource-Based Industry Development Corporation (MARBIDCO); Maryland Clean Energy Center (MCEC); Maryland Technology Development Corporation (TEDCO); and Bainbridge Development Corporation (BDC)); (2) recodifies existing enhanced open meetings requirements that apply to specified public bodies, and expands the application of enhanced open meeting requirements to include the boards of directors of BDC, MARBIDCO, MCEC, and MEDCO; the Canal Place Preservation and Development Authority (CPPDA); the Maryland Food Center Authority (MFCA); the Maryland Health and Higher Educational Facilities Authority (MHHEFA); the Maryland Industrial Development Financing Authority (MIDFA); the Northeast Maryland Waste Disposal Authority (NMWDA); TEDCO; and the Historic St. Mary's City Commission (HSMCC); and (3) establishes other specified requirements. For entities specified in the bill, a project site visit or educational field tour may not be considered a meeting of the body if no organizational business is conducted.

Fiscal Summary

State Effect: General fund, special fund, and nonbudgeted expenditures for multiple agencies increase minimally beginning in FY 2023, as discussed below. Revenues are not directly affected.

Local Effect: Local government finances are not directly affected.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Enhanced Open Meetings Requirements for Specified Public Bodies

Chapters 202 and 203 of 2020 require specified public bodies (Maryland Stadium Authority (MSA); State Board of Elections (SBE); Maryland 9-1-1 Board (formerly the Emergency Number Systems Board); Public Service Commission (PSC); and Maryland Transportation Authority (MDTA)) to make publicly available on their websites:

- each open meeting agenda, generally 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);
- meeting minutes from the portions of a meeting that were held in open session, within two business days after the minutes are approved; and
- live video streaming of each portion of a meeting that is held in open session, subject to specified exceptions that apply to MDTA and MSA.

In addition, Chapters 202 and 203 generally require each specified agency to maintain on its website (1) meeting minutes for at least five years and (2) complete and unedited archived video recordings of meetings for at least one year. MDTA must maintain archived video recordings on its website for at least *five* years.

Chapter 72 of 2021 establishes requirements similar to those specified above for the Board of Directors of the Maryland Environmental Service (MES).

Under the bill, the requirements described above are generally recodified under OMA (instead of each body's respective statute, as under current law); thus, complaints alleging violations may be submitted to and resolved by the Open Meetings Law Compliance Board. Further, the bill expands the scope of the above requirements to (1) apply to additional public bodies (including the boards of directors of BDC, MARBIDCO, MCEC, and MEDCO; CPPDA; MFCA; MHHEFA; MIDFA; NMWDA; TEDCO; and HSMCC) and (2) include additional requirements. (As noted above, some of these public bodies are newly subject to OMA as a result of the bill, including MEDCO, MARBIDCO, MCEC, BDC, and TEDCO.)

Thus, *in addition to the above-described requirements*, each public body subject to enhanced open meetings requirements under the bill must, together with each open meeting agenda, make publicly available on its website a summary of any finalized documents, written testimony from the public, and other materials that the public body will vote on at

the open meeting. (Such materials generally must be made available at least 48 hours in advance, along with the agenda.) To the extent practicable, each open meeting agenda must indicate (1) whether the public body intends to adjourn the open session to a closed session (consistent with existing OMA requirements) and (2) if applicable, the expected time at which the public body intends to adjourn the open session to a closed session. Each specified public body must approve meeting minutes in a timely manner, and each open meeting agenda must include consideration of the meeting minutes from the most recent meeting, unless the meeting is an emergency meeting and consideration of the minutes from the prior meeting is not practicable, as specified.

The bill's requirements may not be construed to prevent a public body from altering the agenda of a meeting after the agenda has been made available to the public. The bill establishes the intent of the General Assembly that the bill's requirements relating to publication of documents, public testimony, and other materials in advance of an open meeting may not be construed to (1) limit the discussions and deliberations of the public body to matters referenced in the materials published prior to the meeting or (2) require the disclosure of documents or material that would be exempt from public inspection under Maryland's Public Information Act.

Existing exceptions to the live video streaming requirement for MDTA and MSA are retained under the bill. Thus, consistent with current law, MDTA need only provide live video streaming 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. In addition, if MSA meets by telephone conference, it need only provide live *audio* streaming of each portion of the meeting held in open session. However, under the bill, MDTA need only maintain archived video recordings on its website for a minimum of one year (instead of five years, under current law), consistent with the bill's requirement for other specified public bodies.

Open Meetings Act, Generally

Under OMA, with limited exceptions, a public body must (1) meet in open session in places 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.

Under current law, MEDCO, MARBIDCO, MCEC, BDC, and TEDCO are not subject to open meetings requirements under OMA.

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 any information regarding the subject matter of 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. Under OMA, 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.

Compliance: The State Open Meetings Law Compliance Board must receive, review, and resolve complaints from any person alleging a violation of OMA and issue a written opinion as to whether a violation has occurred. The opinions of the board are advisory only. The board may not require or compel any specific actions by a public body. By October 1 each year, the board must submit an annual report to the Governor and the General Assembly that includes specified information about the number, nature, and disposition of cases brought before it. In addition, the board must post the names of public bodies determined to have violated OMA and the opinions that describe the violations on the Open Meetings Act page of the Office of the Attorney General's (OAG) website.

Training: The board, in conjunction with OAG and other interested organizations or persons, must develop and conduct educational programs and distribute educational materials outlining the requirements of OMA to public bodies, the Maryland Municipal League, the Maryland Association of Counties, and the Maryland Association of Boards

of Education. A public body must designate at least one employee, officer, or member to receive training on the requirements of the open meetings law.

Closed Sessions: A public body may not meet in closed session unless at least one member of the body has been designated to receive training on the requirements of the open meetings law. If a designated individual cannot be present at an open meeting at which the public body votes to hold a closed session, the body must complete a specified compliance checklist developed by OAG and include the checklist in the meeting minutes.

State/Local Expenditures: Most of the entities affected by the bill (including MARBIDCO, MDTA, MES, MHHEFA, MIDFA, MSA, NMWDA, PSC, SBE, and the Maryland 9-1-1 Board) can comply with the bill's requirements with existing budgeted resources. However, expenditures for other entities increase minimally beginning in fiscal 2023 in order to provide live and archived video of meetings in accordance with the bill. For example, CPPDA, MFCA, MCEC, and TEDCO anticipate one-time equipment costs and ongoing contractual costs beginning in fiscal 2023. Thus, special fund expenditures for CPPDA, general fund expenditures for TEDCO and potentially HSMCC, and nonbudgeted expenditures for multiple agencies increase minimally beginning in fiscal 2023.

The Open Meetings Law Compliance Board can likely handle any additional complaints that may arise as a result of the bill with existing budgeted resources.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 375 (Delegate Korman, *et al.*) - Health and Government Operations.

Information Source(s): Office of the Attorney General; Bainbridge Development Corporation; Maryland Technology Development Corporation; Department of Information Technology; Maryland Environmental Service; Department of Commerce; Cecil County; Northeast Maryland Waste Disposal Authority; Maryland Department of Emergency Management; Maryland Department of Agriculture; Maryland Agricultural and Resource-Based Industry Development Corporation; Maryland Health and Higher Educational Facilities Authority; Canal Place Preservation and Development Authority; Maryland Department of Health; Maryland Department of Transportation; Maryland State Board of Elections; Maryland Energy Administration; Maryland Food Center Authority; Maryland Automobile Insurance Fund; Public Service Commission; Maryland Stadium Authority; Maryland Clean Energy Center; Department of Legislative Services

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Analysis by: Elizabeth J. Allison

Direct Inquiries to:
(410) 946-5510
(301) 970-5510