



Maryland Municipal League
The Association of Maryland's Cities and Towns

TESTIMONY

February 11, 2020

Committee: House Health and Government Operations

Bill: HB 502 – Public Information Act – Revisions

Position: Support with Amendment

Reason for Position:

The Maryland Municipal League supports HB 502 with amendments. The legislation would expand the Public Information Act Compliance Board's authority with the goal of creating a quicker and cheaper alternative to settling disputes than currently exists in Maryland. Our position, however, is not without concern.

The League supports transparency in government and values the contributions of the Compliance Board and Ombudsman to this discussion through their Final Report on the Public Information Act. Much of the recommendations contained form the basis of our support, as MML recognizes the benefit of providing a cheaper and quicker solution when parties cannot agree on the appropriate fee, use of fee waivers, or when an agency fails to respond. We do believe that the inspection of public documents that have been denied is a much trickier subject, but one that we could stomach with appropriate safeguards. The new authority for the Board to review and rule on frivolous, vexatious, or bad faith requests is much welcomed and becomes a key in balancing this bill's new labor requirements (policy creation and implementation, mandatory mediation, and reporting) with existing duties.

We have shared the following amendment considerations with the bill's sponsor (some technical, some substantive):

4-104 (B)(2) & 4-105 (A):

We would like to see language added here that provides an alternative SOLELY for jurisdictions that don't maintain a website. Languages could be similar to that in 4-503: "if the governmental unit does not have a Web site, keep the contact information maintained under this subsection at a place easily accessible by the public;"

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4-1A-04 (a)(IV):

We would appreciate some clarification on whether this is related to the initial response to a request or the final response with appropriate documents. Additionally, since we are giving the Board discretion over fee waivers, we believe it would also make sense to give the Board discretion over the fee waiver amounts, allowing them to waive “part of or all” of a fee. Finally, if the intent is for a completed response, we would ask that language be included that bars a fee waiver when the custodian files a complaint under the new 4-1A-4 (B) of this subtitle (frivolous, vexatious, or in bad faith requests) and is in dispute.

4-1A-04 (C)(1) – line 26:

Possible oversight in giving the Board authority to “adopt regulations to carry out this “TITLE.” We think it should be “Subtitle.”

4-1A-05:

Possible oversight with section 4-1A-05 and the duties of the Ombudsman contained within 4-1B-04 (which doesn’t include the ability to review fees). I’m wondering since this makes the Ombudsman a mandatory step before going to the board, does the review of fees either needs to be added to the Ombudsman’s list of duties or does their needs to be an exemption that allows applicants/custodians to go straight to the Board in these cases?

4-1A-06 (B)(2)(I):

Same as before – we would appreciate some clarification on whether this is related to the initial response to a request or the final response with appropriate documents.

4-1A-06 (B)(4):

I believe this is the area Delegate Lierman’s amendment was intended to clarify.
“THE BOARD SHALL MAINTAIN THE CONFIDENTIALITY OF ANY RECORD OR CONFIDENTIAL INFORMATION SUBMITTED BY A CUSTODIAN OR AN APPLICANT UNDER THIS SUBSECTION IF THE CUSTODIAN OR APPLICANT CLAIMS THE RECORD OR INFORMATION IS CONFIDENTIAL.”

It’s a welcome (and needed) amendment.

We would still like to see language added here that is similar to Section 4-403 but relating to information shared with the Board. 4-403 reads: “A custodian is not civilly or criminally liable for transferring or disclosing the contents of a public record to the Attorney General under § 5-313 of the State Personnel and Pensions Article.”

4-402:

Once again, we would appreciate some clarification on whether this is related to the initial response to a request or the final response with appropriate documents. It also appears to me to be at odds with the discretionary fee waiver under 4-1A-04.

Section 2 – effective date:

We've received some concern over the ability to digest and adopt/implement policies (including for proactive disclosure and reporting) by July 1. MML would appreciate an October 1st effective date.

As drafted, the League does not believe HB 502 contains the appropriate balances and safeguards need to expand the Board's authority in way that judiciously advances the public interest. MML is committed to working with the sponsor and Committee on amendments to further the goals of the bill.

The League therefore respectfully requests that this committee provide HB 502 with a favorable report with the appropriate amendments.

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