



TESTIMONY – Senate Bill 269

Date: February 15, 2022

Position: Favorable with Amendments

Bill Number: Senate Bill 269 – Open Meetings Act – Application and Enhanced Requirements (Maryland State Agency Transparency Act of 2022)

Senate Bill 269 Review and Analysis

Senate Bill 269 subjects the Board of Trustees of the Maryland Automobile Insurance Fund (MAIF) to the Open Meetings Act. The legislation requires MAIF to:

1. Post Board agenda, documents, testimony, minutes and other materials on our website forty-eight hours in advance of each meeting;
2. Live video stream Board meetings;
3. Approve Board minutes in a timely manner;
4. Maintain Board materials on the website for five years; and
5. Maintain Board live-streamed meetings for one year.

The basic concept of Senate Bill 269, to ensure transparency in the conduct of public affairs, is laudatory and should apply to most public entities. However, given MAIF's unique status as a fully regulated insurer, applying the Open Meetings Law to MAIF would be disruptive to the Board process and would serve no useful purpose. Therefore, for the reasons outlined below, we do not oppose the bill generally but request the attached amendment, excluding MAIF from Senate Bill 269.

MAIF performs a private function. MAIF's primary function is to sell insurance policies to Maryland residents who cannot obtain insurance in the private market. Maryland Auto, like Chesapeake Employers, has a public mission as the insurer of last resort, but its activities are all in the private, not public, arena.

MAIF is a regulated insurer. It's policy forms, ratemaking, claims adjusting, investment activities and regulatory environment are identical to the private insurance market. Its rates and forms are approved by the MIA. Like all insurance carriers, MAIF's financial statement is filed annually and is a public record. During examinations, the MIA has complete access to all MAIF information including Board minutes and materials, financials accounts, investments and other records. No other quasi-agency is subject to this MIA oversight.

MAIF's Insured Division is not supported by State funds of any type. Nor does MAIF have any contracts with the State, any county, or any local government. MAIF's Uninsured Division does administer the State's unsatisfied claims program which involves paying claims with State funds under Insurance Article §20-601. But this is a minor function, does not relate to the insurance operation and does not involve State policy.

MAIF's Board of Trustees does not set public policy. Nor does it provide governmental services, issue regulations or standards that apply to the public or issue licenses or permits. It sells insurance policies, pays and adjusts claims and operates as a regulated insurer.

MAIF's Board of Trustees meetings focus on insurance, including underwriting issues, premium volumes, policy counts, expense and loss ratios, financial and investment issues, claims, strategic planning, examinations, and audits and all of the typical issues facing insurance companies. No insurance company could function properly if all these matters were discussed in public.

The Open Meeting Laws would have a chilling effect on Board Members. Board discussions often contain confidential commercial information, that is not suitable for public sessions. If required to discuss these matters in a public meeting, Board members would no doubt be reluctant to raise difficult issues even though the issue was important to the decision-making process.

The General Assembly has already determined that the Open Meeting law should not apply to Maryland Auto. In 2013 (Ch.73) and 2017 (Ch.509) the General Assembly extensively reviewed MAIF's status and concluded that its role as an insurer was incompatible with various State government provisions, e.g. the State Personnel Management System, representation by the Attorney General and the Open Meetings law. In the years since these exemptions were adopted, there have been no complaints or issues regarding these exceptions.

The STAR Commission bill does not apply the Open Meetings Law. The STAR Commission bill, House Bill 416/Senate Bill 399, addresses oversight and governance of MAIF and other quasi-government units. The bill followed an extensive study and does not apply the Open Meetings law. We believe these bills enhance the transparency of these agencies and went far enough, at least regarding MAIF.

The purposes of the Opening Meeting law, i.e. to ensure that "public business be conducted openly and publicly" and that the public be allowed to observe "the making of public policy". GP §3-102. As described by the STAR Commission: "The main purpose of the Open Meetings Act is to enhance transparency and accountability and allow the public to participate in these elements of our democracy". These purposes do not apply to the MAIF Board of Trustees. Citizens do not and should not expect to participate in MAIF's insurance business.

No other insurer is subject to the Open Meetings law, even those created by statute. IWIF, long before the conversion to Chesapeake Employers, was removed from the open meetings law requirement. (LE §10-104). In addition, other statutorily created insurance entities - the Joint Insurance Association, Medical Mutual Liability Insurance, Property Casualty Insurance Guaranty Corporation and Life and Health Insurance Guaranty Corporation - are all exempt from the open meetings law due to their status in the insurance industry. (IN §§9-301; 9-401; 24-201; 24-301; 25-401).

Conclusion

For these reasons, Maryland Auto Insurance urges a favorable with amendments on Senate Bill 269.

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Maryland Automobile Insurance Fund Amendment for the purpose of
Excluding Maryland Auto from Senate Bill 269.

AMENDMENT TO Senate Bill 269

On page 9, strike beginning with "(5)" in line 13 down through ";" in line 14.