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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

Testimony in Support of HB395 Transparency in Public Records Act of 2022

Testimony by Delegate Vaughn Stewart

February 15th, 2022 • Environment and Transportation Committee

What the Bill Does

Nearly forty years ago, the General Assembly passed a law that required each unit of government within the executive branch to establish a record retention program for the “continual, economical, and efficient management records of the unit.” The goal was simple: to increase transparency and accountability, and to provide Marylanders with information about actions taken by their elected officials.” These record-management plans must include procedures for record security, record deletion, and the transfer of permanent records to the state’s archives. Agencies work with the Department of General Services to create these record-retention plans.

However, our predecessors neglected to define “unit of government.” HB395 clarifies that the Office of the Governor is a unit of government for purposes of the record-retention statute. This bill also modernizes the law to ensure that record-retention schedules include written, electronic, or recorded communications between state officials about state business.

Why the Bill Is Important

Governors past and present have exploited this statutory ambiguity to argue that, as the head of the executive branch, they are not a unit of government and are thus exempt from record-retention requirements. This is a dubious legal argument, as it strains credulity to believe the General Assembly would have intended to exempt the most important part of the executive branch from a law increasing transparency in the executive branch. And indeed, in a 2000 case, the Maryland Court of

Appeals—after noting the lack of legislative history on this definition—concluded that, with respect to the Public Information Act, “The offices of the Governor and his staff in the State House and Shaw House in Annapolis, as well as their offices in Baltimore and Washington, are clearly encompassed by the statutory language ‘unit or instrumentality of the State government.’”

Why the Committee Should Vote Favorably

Marylanders have a right to know how decisions were made by the officials they voted for and financed with their taxpayer dollars. We should preserve important historical documentation related to activities of our governors—regardless of their partisan affiliation—to ensure these documents are available for study and review by future governments, historians, and everyday Marylanders. After all, we can only learn from the past if we know how it unfolded.

Maryland should strive to have the most transparent government in the country. By clarifying a definition and closing an egregious loophole, HB395 represents a small step in that direction.

I urge a favorable report.