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TO: The Honorable Shane E. Pendergrass
Chair, Health & Government Operations Committee

FROM: Hannibal G. Williams II Kemerer
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: SB 269: Open Meetings Act – Application and Enhanced Requirements
(Maryland State Agency Transparency Act of 2022) – Support with Amendments

Senate Bill 269 would transfer to the Open Meetings Act certain agenda and livestreaming requirements that currently to specific State agencies; expand the State agencies to which those agenda and livestreaming requirements would apply; and impose new requirements on the public bodies enumerated in the bill, including a requirement to post an agenda and certain materials 48 hours in advance of the meeting and a requirement to post the recording of the meeting. The Office of the Attorney General (“OAG”) provides staff and counsel to assist the Open Meetings Compliance Board, as well as legal advice to State public bodies to help them comply with the Open Meetings Act, and also has a role in promoting public transparency through educational programs, such as the online class on the Open Meetings Act, and the dissemination of information on the open government page of OAG’s website. The OAG supports the bill as amended, with the following three additional amendments to help clarify some ambiguities that might arise if the bill is enacted as currently written.

First, the bill requires the covered public bodies to post “each open meeting agenda, together with a summary of any finalized documents, written testimony from the public, and other materials that the public body will vote on at the meeting.” Although we suspect it is not the intent, that language could potentially be read to require the posting of meeting materials that would otherwise be protected from disclosure under the Public Information Act (the “PIA”). For example, even for agenda items that are discussed in open session, members of the public body may be voting on documents containing personal information that would need to be redacted under the PIA or draft materials that, under the PIA, the custodian would ordinarily have the discretion

to withhold from public inspection. For that reason, we propose that the following clarifying language be added as an uncodified section of the bill:

That it is the intent of the General Assembly that the requirement for publication of documents, testimony from the public, and other materials in advance of an open meeting in accordance with § 3–307 of the General Provisions Article, as enacted by Section 1 of this Act, may not be construed to require the disclosure of documents or material that would be exempt from public inspection under Title 4 of the General Provisions Article.

Second, although the bill requires minutes to be approved at the next meeting of the public body, that might sometimes be impracticable, if the public body has to schedule an emergency meeting soon after the prior meeting and well before its next regular meeting. To resolve that ambiguity, we suggest that the clause in bold be added: **EACH OPEN MEETING AGENDA SHALL INCLUDE CONSIDERATION OF THE MEETING MINUTES FROM THE MOST RECENT MEETING, EXCEPT TO THE EXTENT THAT CONSIDERATION OF THE MOST RECENT MEETING’S MINUTES IS NOT PRACTICABLE DUE TO THE NEED TO SCHEDULE AN EMERGENCY MEETING.**

Third and finally, the bill is not entirely clear as to whether the general rule articulated in § 3-302.1(e) of the General Provisions Article—which allows public bodies to amend agendas after they are posted—continues to apply to the agendas that will be covered by the bill. For that reason, we suggest that the following language be added as a new subsection (j) of § 3-307 for clarity: **Nothing in this section may be construed to prevent a public body from altering the agenda of a meeting after the agenda has been made available to the public.**

If you have any questions about these proposed amendments, please let us know, and we would be happy to discuss them.

cc: Sponsor & Members of the Health & Government Operations Committee