

SENATE BILL 72

P3, P1

(PRE-FILED)

11r0889
CF HB 344

By: **Senator Kagan**

Requested: October 8, 2020

Introduced and read first time: January 13, 2021

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Open Meetings Act – Requirements for State Agencies and Local Boards of**
3 **Elections**
4 **(Maryland Transparency Act of 2021)**

5 FOR the purpose of requiring State agencies in the Executive Branch and local boards of
6 elections to make publicly available on their websites an agenda and all meeting
7 materials a certain amount of time in advance of each open meeting or, under certain
8 circumstances, as far in advance of the meeting as practicable; requiring State
9 agencies and local boards of elections to make publicly available on their websites
10 live video or audio streaming of each portion of a certain meeting, a certain recording
11 for a certain time period, and certain meeting minutes within a certain time period
12 and for a certain time period; requiring certain public bodies to discuss and approve
13 meeting minutes as soon as practicable and in a certain manner; altering the
14 violations for which a person may file a certain petition and for which a court may
15 declare a certain action of a public body void for failure to comply; repealing certain
16 provisions of law rendered obsolete by certain provisions of this Act; providing for
17 the application of certain provisions of this Act; making conforming changes; and
18 generally relating to the Open Meetings Act.

19 BY repealing and reenacting, without amendments,
20 Article – Economic Development
21 Section 10–604(a)
22 Annotated Code of Maryland
23 (2018 Replacement Volume and 2020 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article – Economic Development
26 Section 10–607(a)
27 Annotated Code of Maryland
28 (2018 Replacement Volume and 2020 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 BY repealing and reenacting, without amendments,
2 Article – Election Law
3 Section 2–101(a)
4 Annotated Code of Maryland
5 (2017 Replacement Volume and 2020 Supplement)
- 6 BY repealing and reenacting, with amendments,
7 Article – Election Law
8 Section 2–102(d)
9 Annotated Code of Maryland
10 (2017 Replacement Volume and 2020 Supplement)
- 11 BY repealing and reenacting, with amendments,
12 Article – General Provisions
13 Section 3–302.1, 3–306(b) through (e), and 3–401(b) and (d)
14 Annotated Code of Maryland
15 (2019 Replacement Volume and 2020 Supplement)
- 16 BY adding to
17 Article – General Provisions
18 Section 3–306(c)
19 Annotated Code of Maryland
20 (2019 Replacement Volume and 2020 Supplement)
- 21 BY repealing and reenacting, without amendments,
22 Article – Public Safety
23 Section 1–305(a)
24 Annotated Code of Maryland
25 (2018 Replacement Volume and 2020 Supplement)
- 26 BY repealing and reenacting, with amendments,
27 Article – Public Safety
28 Section 1–305(e)
29 Annotated Code of Maryland
30 (2018 Replacement Volume and 2020 Supplement)
- 31 BY repealing and reenacting, without amendments,
32 Article – Public Utilities
33 Section 2–101(a)
34 Annotated Code of Maryland
35 (2020 Replacement Volume and 2020 Supplement)
- 36 BY repealing and reenacting, with amendments,
37 Article – Public Utilities
38 Section 2–108(b)
39 Annotated Code of Maryland

1 (2020 Replacement Volume and 2020 Supplement)

2 BY repealing and reenacting, without amendments,
 3 Article – Transportation
 4 Section 4–201
 5 Annotated Code of Maryland
 6 (2020 Replacement Volume)

7 BY repealing and reenacting, with amendments,
 8 Article – Transportation
 9 Section 4–212
 10 Annotated Code of Maryland
 11 (2020 Replacement Volume)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 13 That the Laws of Maryland read as follows:

14 **Article – Economic Development**

15 10–604.

16 (a) There is a Maryland Stadium Authority.

17 10–607.

18 (a) **[(1)]** The Authority shall determine the times and places of its meetings.

19 **[(2)]** The Authority shall make publicly available on its website:

20 (i) each open meeting agenda:

21 1. at least 48 hours in advance of each meeting; or

22 2. if the meeting is being held due to an emergency, a natural
 23 disaster, or any other unanticipated situation, as far in advance of the meeting as
 24 practicable;

25 (ii) meeting minutes from the portions of a meeting that were held
 26 in open session, not more than 2 business days after the minutes are approved; and

27 (iii) except as provided in paragraph (3) of this subsection, live video
 28 streaming of each portion of a meeting that is held in open session.

29 (3) If the Authority meets by telephone conference, the Authority shall
 30 make publicly available on its website live audio streaming of each portion of the meeting
 31 that is held in open session.

1 (4) The Authority shall maintain on its website:

2 (i) meeting minutes made available under paragraph (2) of this
3 subsection for a minimum of 5 years after the date of the meeting;

4 (ii) a complete and unedited archived video recording of each open
5 meeting for which live video streaming was made available under paragraph (2) of this
6 subsection for a minimum of 1 year after the date of the meeting; and

7 (iii) a complete and unedited archived audio recording of each open
8 meeting for which live audio streaming was made available under paragraph (3) of this
9 subsection for a minimum of 1 year after the date of the meeting.]

10 Article – Election Law

11 2–101.

12 (a) There is a State Board of Elections consisting of five members.

13 2–102.

14 (d) [(1) The State Board shall make publicly available on its website:

15 (i) each open meeting agenda:

16 1. at least 48 hours in advance of each meeting; or

17 2. if the meeting is being held due to an emergency, a natural
18 disaster, or any other unanticipated situation, as far in advance of the meeting as
19 practicable;

20 (ii) meeting minutes from the portions of a meeting that were held
21 in open session, not more than 2 business days after the minutes are approved; and

22 (iii) live video streaming of each portion of a meeting that is held in
23 open session.

24 (2) The State Board shall maintain on its website:

25 (i) meeting minutes made available under paragraph (1)(ii) of this
26 subsection for a minimum of 5 years after the date of the meeting; and

27 (ii) a complete and unedited archived video recording of each open
28 meeting for which live video streaming was made available under paragraph (1)(iii) of this
29 subsection for a minimum of 1 year after the date of the meeting.

30 (3)] The Department of Information Technology shall provide to the State

1 Board the technical staff, support, and equipment necessary to stream live video of the open
2 meetings of the State Board.

3 Article – General Provisions

4 3–302.1.

5 (a) [(1)] Subject to [subsection] SUBSECTIONS (b) AND (C) of this section,
6 before meeting in an open session, a public body shall make available to the public an
7 agenda:

8 [(i)] (1) containing known items of business or topics to be
9 discussed at the portion of the meeting that is open; and

10 [(ii)] (2) indicating whether the public body expects to close any
11 portion of the meeting in accordance with § 3–305 of this subtitle.

12 [(2)] (B) (1) THIS SUBSECTION DOES NOT APPLY TO A PUBLIC
13 BODY THAT IS SUBJECT TO SUBSECTION (C) OF THIS SECTION.

14 (2) If an agenda has been determined at the time the public body
15 gives notice of the meeting under § 3–302 of this subtitle, the public body shall make
16 available the agenda at the same time the public body gives notice of the meeting.

17 (3) If an agenda has not been determined at the time the public body gives
18 notice of the meeting, the public body shall make available the agenda as soon as
19 practicable after the agenda has been determined but no later than 24 hours before the
20 meeting.

21 [(b)] (4) If a public body is unable to comply with the provisions of [subsection
22 (a) of this section] PARAGRAPHS (2) OR (3) OF THIS SUBSECTION because the meeting
23 was scheduled in response to an emergency, a natural disaster, or any other unanticipated
24 situation, the public body shall make available on request an agenda of the meeting within
25 a reasonable time after the meeting occurs.

26 (C) (1) THIS SUBSECTION APPLIES ONLY TO:

27 (I) BEFORE OCTOBER 1, 2022, A PUBLIC BODY THAT IS A STATE
28 AGENCY IN THE EXECUTIVE BRANCH OR LOCAL BOARD OF ELECTIONS THAT HAS
29 FIVE OR MORE EMPLOYEES; AND

30 (II) BEGINNING OCTOBER 1, 2022, ALL PUBLIC BODIES THAT
31 ARE EITHER A STATE AGENCY IN THE EXECUTIVE BRANCH OR LOCAL BOARD OF
32 ELECTIONS.

1 **(2) EACH PUBLIC BODY SUBJECT TO THIS PARAGRAPH SHALL MAKE**
 2 **PUBLICLY AVAILABLE ON ITS WEBSITE AN AGENDA AND ALL MEETING MATERIALS:**

3 **(I) AT LEAST 48 HOURS IN ADVANCE OF EACH OPEN MEETING;**
 4 **OR**

5 **(II) IF THE MEETING IS BEING HELD IN RESPONSE TO AN**
 6 **EMERGENCY, A NATURAL DISASTER, OR ANY OTHER UNANTICIPATED SITUATION, AS**
 7 **FAR IN ADVANCE AS PRACTICABLE.**

8 **[(c)] (D)** A public body is not required to make available any information in the
 9 agenda regarding the subject matter of the portion of the meeting that is closed in
 10 accordance with § 3–305 of this subtitle.

11 **[(d)] (E)** (1) A public body required to make available an agenda under
 12 **[subsection (a)] SUBSECTION (B) OR (C)** of this section may make available the agenda
 13 using a method authorized for giving notice under § 3–302(c) of this subtitle.

14 (2) The method a public body uses for making available an agenda may be
 15 different from the method a public body uses for giving notice.

16 **[(e)] (F)** **[Nothing in this] THIS** section may **NOT** be construed to prevent a
 17 public body from altering the agenda of a meeting after the agenda has been made available
 18 to the public.

19 3–306.

20 (b) (1) **THIS SUBSECTION DOES NOT APPLY TO A PUBLIC BODY THAT IS**
 21 **SUBJECT TO SUBSECTION (C) OF THIS SECTION.**

22 **(2)** Subject to paragraphs **[(2) and] (3) AND (4)** of this subsection, as soon
 23 as practicable after a public body meets, it shall have minutes of its session prepared.

24 **[(2)] (3)** A public body need not prepare minutes of an open session if:

25 (i) live and archived video or audio streaming of the open session is
 26 available; or

27 (ii) the public body votes on legislation and the individual votes
 28 taken by each member of the public body who participates in the voting are posted promptly
 29 on the Internet.

30 **[(3)] (4)** The information specified under paragraph **[(2)] (3)** of this
 31 subsection shall be deemed the minutes of the open session.

1 **(C) (1) THIS SUBSECTION APPLIES ONLY TO:**

2 **(I) BEFORE OCTOBER 1, 2022, A PUBLIC BODY THAT IS A STATE**
3 **AGENCY IN THE EXECUTIVE BRANCH OR LOCAL BOARD OF ELECTIONS THAT HAS**
4 **FIVE OR MORE EMPLOYEES; AND**

5 **(II) BEGINNING OCTOBER 1, 2022, ALL PUBLIC BODIES THAT**
6 **ARE EITHER A STATE AGENCY IN THE EXECUTIVE BRANCH OR A LOCAL BOARD OF**
7 **ELECTIONS.**

8 **(2) EACH PUBLIC BODY SUBJECT TO THIS SECTION SHALL MAKE**
9 **PUBLICLY AVAILABLE ON ITS WEBSITE:**

10 **(I) LIVE VIDEO OR AUDIO STREAMING OF EACH PORTION OF A**
11 **MEETING THAT IS HELD IN OPEN SESSION;**

12 **(II) A COMPLETE AND UNEDITED ARCHIVED VIDEO OR AUDIO**
13 **RECORDING OF THE LIVE VIDEO OR AUDIO STREAMING MADE AVAILABLE UNDER**
14 **ITEM (I) OF THIS PARAGRAPH FOR A MINIMUM OF 1 YEAR AFTER THE DATE OF THE**
15 **MEETING; AND**

16 **(III) MEETING MINUTES FROM THE PORTIONS OF EACH MEETING**
17 **THAT IS HELD IN OPEN SESSION:**

18 **1. WITHIN 2 BUSINESS DAYS AFTER THE MINUTES ARE**
19 **APPROVED; AND**

20 **2. FOR A MINIMUM OF 5 YEARS AFTER THE DATE OF THE**
21 **MEETING.**

22 **(3) EACH PUBLIC BODY SUBJECT TO THIS SECTION SHALL DISCUSS**
23 **AND APPROVE MEETING MINUTES AS SOON AS PRACTICABLE AND IN A TIMELY**
24 **MANNER.**

25 **(4) A PUBLIC BODY MAY COMPLY WITH PARAGRAPH (2)(III) OF THIS**
26 **SUBSECTION BY POSTING A SEARCHABLE TRANSCRIPT OF THE LIVE VIDEO OR AUDIO**
27 **STREAMING REQUIRED UNDER PARAGRAPH (2)(I) OF THIS SUBSECTION.**

28 **[(c)] (D) (1) The minutes shall reflect:**

29 **(i) each item that the public body considered;**

30 **(ii) the action that the public body took on each item; and**

1 (iii) each vote that was recorded.

2 (2) If a public body meets in closed session, the minutes for its next open
3 session shall include:

4 (i) a statement of the time, place, and purpose of the closed session;

5 (ii) a record of the vote of each member as to closing the session;

6 (iii) a citation of the authority under § 3–305 of this subtitle for
7 closing the session; and

8 (iv) a listing of the topics of discussion, persons present, and each
9 action taken during the session.

10 (3) (i) A session may be recorded by a public body.

11 (ii) Except as otherwise provided in paragraph (4) of this subsection,
12 the minutes and any recording of a closed session shall be sealed and may not be open to
13 public inspection.

14 (4) The minutes and any recording shall be unsealed and open to inspection
15 as follows:

16 (i) for a meeting closed under § 3–305(b)(5) of this subtitle, when the
17 public body invests the funds;

18 (ii) for a meeting closed under § 3–305(b)(6) of this subtitle, when the
19 public securities being discussed have been marketed; or

20 (iii) on request of a person or on the public body's own initiative, if a
21 majority of the members of the public body present and voting vote in favor of unsealing
22 the minutes and any recording.

23 [(d)] (E) Except as provided in subsection [(c)] (D) of this section, minutes of a
24 public body are public records and shall be open to public inspection during ordinary
25 business hours.

26 [(e)] (F) (1) A public body shall keep a copy of the minutes of each session
27 and any recording made under subsection [(b)(2)(i) or (c)(3)(i)] (B)(3)(I), (C)(2)(I), OR
28 (D)(3)(I) of this section for at least 5 years after the date of the session.

29 (2) [To] EXCEPT AS PROVIDED UNDER SUBSECTION (C)(2)(II) OF THIS
30 SECTION, the extent practicable, a public body shall post online the minutes or recordings
31 required to be kept under paragraph (1) of this subsection.

1 3-401.

2 (b) (1) If a public body fails to comply with § 3-301, § 3-302, **§ 3-302.1(C)**, §
3 3-303, § 3-305, or [**§ 3-306(c)**] **§ 3-306(B) OR (D)** of this title, any person may file with a
4 circuit court that has venue a petition that asks the court to:

5 (i) determine the applicability of those sections;

6 (ii) require the public body to comply with those sections; or

7 (iii) void the action of the public body.

8 (2) If a violation of § 3-302, **§ 3-302.1(C)**, § 3-305, or [**§ 3-306(c)**] **§**
9 **3-306(B) OR (D)** of this title is alleged, the person shall file the petition within 45 days
10 after the date of the alleged violation.

11 (3) If a violation of § 3-301 or § 3-303 of this title is alleged, the person
12 shall file the petition within 45 days after the public body includes in the minutes of an
13 open session the information specified in [**§ 3-306(c)(2)**] **§ 3-306(D)(2)** of this title.

14 (4) If a written complaint is filed with the Board in accordance with §
15 3-205 of this title, the time between the filing of the complaint and the mailing of the
16 written opinion to the complainant and the affected public body under § 3-207(d) of this
17 title may not be included in determining whether a claim against a public body is barred
18 by the statute of limitations set forth in paragraphs (2) and (3) of this subsection.

19 (d) A court may:

20 (1) consolidate a proceeding under this section with another proceeding
21 under this section or an appeal from the action of the public body;

22 (2) issue an injunction;

23 (3) determine the applicability of this title to the discussions or decisions
24 of public bodies;

25 (4) declare the final action of a public body void if the court finds that the
26 public body willfully failed to comply with § 3-301, § 3-302, **§ 3-302.1(C)**, § 3-303, or [**§**
27 **3-306(c)**] **§ 3-306(B) OR (D)** of this title and that no other remedy is adequate;

28 (5) as part of its judgment:

29 (i) assess against any party reasonable counsel fees and other
30 litigation expenses that the party who prevails in the action incurred; and

31 (ii) require a reasonable bond to ensure the payment of the

1 assessment; and

2 (6) grant any other appropriate relief.

3 **Article – Public Safety**

4 1–305.

5 (a) There is a Maryland 9–1–1 Board in the Department of Public Safety and
6 Correctional Services.

7 (e) [(1)] The Board shall meet as necessary, but at least once each quarter.

8 [(2)] The Board shall make publicly available on its website:

9 (i) each open meeting agenda:

10 1. at least 48 hours in advance of each meeting; or

11 2. if the meeting is being held due to an emergency, a natural
12 disaster, or any other unanticipated situation, as far in advance of the meeting as
13 practicable;

14 (ii) meeting minutes from the portions of a meeting that were held
15 in open session, not more than 2 business days after the minutes are approved; and

16 (iii) live video streaming of each portion of a meeting that is held in
17 open session.

18 (3) The Board shall maintain on its website:

19 (i) meeting minutes made available under paragraph (2) of this
20 subsection for a minimum of 5 years after the date of the meeting; and

21 (ii) a complete and unedited archived video recording of each open
22 meeting for which live video streaming was made available under paragraph (2) of this
23 subsection for a minimum of 1 year after the date of the meeting.]

24 **Article – Public Utilities**

25 2–101.

26 (a) There is a Public Service Commission.

27 2–108.

28 (b) [(1)] The Commission shall meet at the times and places in the State as the

1 Commission considers necessary.

2 [(2) The Commission shall make publicly available on its website:

3 (i) each open meeting agenda:

4 1. at least 48 hours in advance of each meeting; or

5 2. if the meeting is being held due to an emergency, a natural
6 disaster, or any other unanticipated situation, as far in advance of the meeting as
7 practicable;

8 (ii) meeting minutes from the portions of a meeting that were held
9 in open session, not more than 2 business days after the minutes are approved; and

10 (iii) live video streaming of each portion of a meeting that is held in
11 open session.

12 (3) The Commission shall maintain on its website:

13 (i) meeting minutes made available under paragraph (2) of this
14 subsection for a minimum of 5 years after the date of the meeting; and

15 (ii) a complete and unedited archived video recording of each open
16 meeting for which live video streaming was made available under paragraph (2) of this
17 subsection for a minimum of 1 year after the date of the meeting.]

18 Article – Transportation

19 4–201.

20 There is a Maryland Transportation Authority.

21 4–212.

22 [(a) The Authority shall make publicly available on its website:

23 (1) Each open meeting agenda:

24 (i) At least 48 hours in advance of each meeting; or

25 (ii) If the meeting is being held due to an emergency, a natural
26 disaster, or any other unanticipated situation, as far in advance of the meeting as
27 practicable;

28 (2) Meeting minutes from the portions of a meeting that were held in open
29 session, not more than 2 business days after the minutes are approved;

1 (3) Live video streaming of each open meeting of the Authority that is held
2 at:

3 (i) The headquarters of the Authority; or

4 (ii) Any other location where the Authority held at least 10 meetings
5 during the immediately preceding calendar year; and

6 (4) A complete and unedited archived video recording of each open meeting
7 for which live video streaming was made available under item (3) of this subsection for a
8 minimum of 5 years after the date of the meeting.

9 (b)] The Department of Information Technology shall provide to the Authority the
10 technical staff, support, and equipment necessary to livestream the open meetings of the
11 Authority.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2021.