

Minutes of the Special Meeting of the Open Meetings Compliance Board
February 14, 2017, at 11:00 a.m.
Office of the Attorney General
200 St. Paul Place
Baltimore, Maryland 21202

In Attendance:

Board and Board Staff:

Jonathan A. Hodgson, Board Chair
April Caso Ishak, Board Member
Rachel Shapiro Grasmick, Board Member
Ann MacNeille, Board Counsel
Deborah P. Spence, Board Administrator
Janice Clark, Administrator

Others:

Paul Bessel
Barbara Braswell
Rebecca Snyder, MDCC Press Association
Damon Effingham, Common Cause
Mary, Caroline County Attorney's Office
Michele Fluss

Call to order and welcoming remarks

Mr. Hodgson called the meeting to order at 11:00 a.m. He introduced himself and the Board members and explained the agenda for this special meeting of the Open Meeting Compliance Board. The special meeting was called to discuss a number of proposed legislative changes to the Open Meetings Act. The goal of the discussion is for the Board to ascertain the Board's position on three separate pieces of legislation: HB 27, SB 450/HB 880, and SB 253/HB 438. He hoped to be able to accommodate members of the public who wished to speak.

SB 450/ HB 880

Mr. Hodgson opened the discussion of SB 450/ HB 880 by asking counsel to describe the proposed bill and compare the current law to the proposed changes. As introduced, the bill would:

- Require all members of a public body to take training or else submit to the Open Meetings Compliance Board a letter stating the individual's unwillingness or inability to do so;
- Require new members to take training within 90 days;
- Require incumbents to take it by January 1, 2018 unless they have already taken it;
- Repeal the requirement that public bodies submit designees' names to the OMCB.

Mr. Hodgson asked counsel how the proposed legislation was different from similar legislation that was proposed in 2016. The Board's position, then, was that it supported legislation that ensures that meetings will always be attended by someone trained in the requirements of the Act. Counsel noted that the legislation was similar, but that the new bill addressed previous concerns that the training requirements not extend to all employees of public entities. As previously proposed, the requirement would have applied to employees with no involvement in meetings, as would be the case with a school board's employees.

Ms. Snyder reported to the Board that she had learned the previous night that the legislation had been amended extensively. Mr. Bessel concurred that he also had received extensive revisions the evening before. Counsel reported that the amendments had not yet been posted. The Board unanimously agreed it was not prepared to address amendments that it would be seeing for the first time at the meeting and that any discussion of this legislation would have to be postponed until Board members could review the amended proposal. Mr. Hodgson confirmed that the hearing on this legislation would be held in the House

on February 15, 2017 and the Senate on February 16, 2017, too soon for the Board to meet. He instructed Board staff to inform the Committee that given the late changes, the Board will not be able to take a position or comment on the legislation.

Mr. Hodgson asked for input from Board members and the public for their impressions of how the proposed amendments to the legislation had not been posted. Ms. Snyder noted that it appeared that changes were made rather quickly and that amendments do not generally get recorded until a vote has taken place.

HB 27

Mr. Hodgson opened the discussion of HB 27 by asking counsel to describe the proposed bill and compare the current law to the proposed changes. Counsel read a summary from the fiscal note: “This bill requires a public body subject to the Open Meetings Act that elects to promptly post on the Internet individual public votes on legislation taken by members instead of prepared minutes of an open session to also post (1) amendments passed by the public body, if applicable, and (2) a reprint of the legislation that includes the text of the legislation.” Counsel explained that the bill affected one of the methods of keeping minutes. She said that she had listened to the House committee hearing on the bill, that the sponsor’s view was that the bills would only affect the General Assembly, and that it did not appear that the bill would affect local legislative bodies because they do not keep minutes that way. Mr. Hodgson asked for comments on this proposal. The general consensus of the members was that there were no significant amendments to the legislation in terms of the Open Meetings Act and that there was no reason not to support it. Ms. Ishak noted that this proposal makes sense and is not cumbersome to the transparency process. Counsel noted that any position by the Board could be noted in the bill file for later votes.

Motion by Ms. Ishak for the Open Meetings Compliance Board to take a position of support for HB 27 and its attempt to add transparency to the open meeting process. Seconded by Ms. Grasmick. Motion unanimously passed.

SB 253/HB 438

Mr. Hodgson opened the discussion of SB 253/HB 438 by asking counsel to describe the proposed bill and compare the current law to the proposed changes. Counsel described the bill as proposing new reporting of violations; new collection of training information; required attendance by trainees at every meeting; use of compliance checklist and retention with minutes. Counsel noted that this legislation has numerous provisions that can be broken down into two major categories: training and reporting. Board members discussed the following provisions first.

- **§ 3-204(e)(2)(iv)**. Requirement for the OMCB, in its annual report, to “identify the provisions [of the Act] that the Board has found a public body to have violated and the number of times each provision has been violated”
- **§ 3-204(e)(2)(v)**. Requirement for OMCB, in annual report, to: “identify each public body that the Board has found to have violated a provision of [the Act]”:
- **§ 3-211(d)** Requirement for OMCB to post on the Board’s webpage the name of each violator and the opinion that describes the violation.
- **Uncodified § 2**: Requirement for OMCB to collaborate with MACo, MML, and IGSR to “develop a list of contacts for public bodies to whom the Board may send” various educational materials.

Mr. Hodgson offered that all of these proposals appear to be supportable and asked Board members to discuss them as a group. Counsel noted the difficulty in quantifying violations in opinions in which the Board has discussed a public body’s practices over a number of years or in which an entity has violated every section of the Act for years because it has not operated as a public body. Ms. Snyder noted the goal of being able to identify the public bodies that frequently violate the Act. Board members discussed the proposals and noted that there was some vagueness in the ability to quantify violations but that the Board could interpret the requirement in such a way as to not overly burden the way in which it issues opinions and that the Board would instruct staff on its interpretation. The members also noted that the language of

one of the proposals could be clearer. After further discussion of potential ways to overcome the challenges of quantifying violations and clearing up the understanding of the requirements, Board members agreed that it would unanimously support these proposals.

Motion by Ms. Ishak to support and provide comments to the legislature to accept the proposed amendments to: §§ 3-204(d), 3-204(e)(2)(iv), 3-204(e)(2)(v), and 3-211(d). Seconded by Ms. Grasmick. Motion unanimously passed.

Board members discussed the following requirements for public bodies in the legislation.

- **§3-213(a)(1)** Requires public bodies to designate for training “at least one member of the public body with the authority to close a meeting.”
- **§3-213(B)(2)(II)** Training/Conduct of Meetings/Minutes: Requires that every meeting be attended by a member who has had training or else that “the public body shall complete the Compliance Checklist for Meetings subject to the Open Meetings Act developed by the Office of the Attorney General and include the completed checklist in the minutes for the meeting.”

Board members discussed the first point in this section of the legislation and agreed that the Board could not support the policy as it was written because no one member of the public body has the “authority to close a meeting.” However, Board members unanimously agreed to support a requirement of open meeting training for all members of a public body. Upon discussion, the Board also unanimously agreed to apply the same requirement to the second point, thus making the checklist provision irrelevant.

The next group of proposals discussed by Board members are in Section 2 of the legislation:

- **(1)** Requirement for OMCB to “collaborate with” MACo, MML, and IGSR to “implement a process for reporting to the Board the names” and public body-affiliation of training designees who have completed the training.
- **(2)** Requirement for OMCB to report the results of the collaboration to the pertinent Senate and House Committees by December 1, 2017.
- Repeal the requirement that public bodies submit designees’ names alone to the OMCB.

Board members noted the difficulties of monitoring compliance with the training requirement by all of the public bodies in Maryland. Counsel remarked that it might not be fully understood that the universe of public bodies is constantly changing because, for example, there is a new public body every time a mayor appoints a task force or a council adopts a resolution to create one. She noted that the parent public bodies are in the best position to keep track of compliance. Mr. Effingham stated his understanding that IGSR, the host of the online course, could easily report the names of people who take the course. Counsel explained that the course was designed before there was a training requirement, was designed for members of the public and press as well as members of public bodies, and was not designed to collect people’s information. Currently, public bodies are advised to retain their own records of compliance. Ms. Ishak noted that the Board was unlikely to support the cost of a change to the online course for tracking purposes and that public bodies should maintain the responsibility of tracking the training of designees. She recommended that public entities to which the Board has transmitted an open meetings complaint be required to provide, with their response, proof of compliance with the training requirement. Mr. Hodgson agreed that this part of the bill would impose burdensome responsibilities and functions for the Board.

Motion by Ms. Ishak to oppose changes to the legislation that require tracking of designee training by the Board due to staffing burden concerns. Seconded by Mr. Hodgson. Motion unanimously passed.

Mr. Hodgson thanked Board members and the other attendees for their input at this special meeting. He adjourned the meeting at 12:27 pm.