

Minutes
Open Meeting Compliance Board
Annual Meeting
August 3, 2017, 11:00 am
Room 161, Arundel Center, 44 Calvert Street, Annapolis

In attendance:

Board members: Jonathan Hodgson, Chair; Rachel Grasmick and April Ishak, members

Staff. Ann MacNeille, Counsel; Janice Clark, Administrator

Members of the Public: Jim Peck and Bill Jorch, Maryland Municipal League; Leslie Knapp, Jr. Maryland Association of Counties; Donna Lane, Dorchester County Council; Tyson Bennett, Anne Arundel County Board of Education

Jonathan Hodgson, Chair, called the meeting to order at 11:00 am, introduced Ms. Grasmick and Ms. Ishak, and welcomed those in attendance. He referred all the participants to the meeting agenda.

1. Review of 2017 legislation. Counsel provided a report on the impact of legislation passed by the General Assembly in 2017 that affected the Open Meetings Act and the Open Meetings Compliance Board. In summary, she noted that there is a new training requirement in which each public body must designate a member, officer, or employee to take training in the Act through one of three identified sources. If no member of the public body at the open part of the meeting has taken the training, then the public body must complete the compliance checklist before entering closed session.

She noted that there is confusion over the legislation and emphasized that public bodies need to be made aware that the closing statement *and* the checklist must be completed if a designated member is not present. She also noted that there was confusion regarding the two different effective dates for different parts of the legislation.

Board members discussed the Board's role in advising on the requirements of the legislation and noted that new information on the training requirement changes has been posted at <http://www.marylandattorneygeneral.gov/Pages/OpenGov/Openmeetings/default.aspx>.

The Chairman read the posted guidance out loud and asked for public discussion of the implication of the changes. Mr. Bennett asked for clarification regarding public body members who have already received training. He asked if those members need to take the training again. Counsel noted that there is no indication in the Act that those who are trained need to be retrained.

Chairman Hodgson also led a discussion on the question of whether public bodies should require all of their members to take the training. Counsel noted that this was not a requirement of the new legislation. Mr. Knapp indicated that MACo does not support provisions requiring all members to be trained. He noted that members of smaller public bodies do not have the same accessibility to online training.

Counsel suggested that public bodies could visit the OAG website for guidance. Ms. Lane, Dorchester County Council, thanked the Board and noted that the guidance on the website was “perfectly clear to us and our counsel.”

2a. Status of reports due on December 1; Content and process. Chairman Hodgson led a discussion of the content and process for the following report: *Cost-Benefit Analysis for Tracking Designees and Development of a Contact List for Educational Materials* (Cost-Benefit Report) to be submitted to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee.

Counsel provided an overview of the requirements for the **Cost Benefit report**. She noted that, per the requirements, this draft was produced with the Institute for Governmental Service and Research (IGSR), and the Academy for Excellence in Local Governance, both at the University of Maryland, after soliciting input from the Maryland-Delaware-DC Press Association, Common Cause Maryland, MACo, MML, and Maryland Association of Boards of Education and receiving input.

The Chairman led a discussion of the draft report. Ms. Ishak noted that the report, as written, is a thorough response to the legislation. She added that she supports a decentralized tracking method and she completely agrees with the conclusion.

“...that the most benefit to the public—the access to complete, accurate, and current training information in the most logical place to find that information, and each body’s accountability for its own compliance—is achieved by continuing with the expectation that public bodies keep track of their own designees’ training and current affiliations.”

Mr. Hodgson added “The OMCB is not the entity to track the trainees. That would not work given the lack of staff for the board.” Members of the public expressed their agreement with the conclusion Messrs. Peck and Knapp mentioned the difficulty, even for their organizations, of identifying all of the county and municipal public bodies at a point in time. Mr. Knapp added, “MACo compliments staff on the preparation of this report that outlines all of the viable options and we agree with the recommendation in the conclusion.” Counsel noted that the draft was missing one piece of information on costs and that she will supply it as soon as she receives the information.

Counsel noted that the second part of the report concerns developing a list of contacts for an email distribution lists with the intent of disseminating educational material on the Act. Chairman Hodgson reiterated that section of the report. Board members discussed the report language, the Board’s responsibilities regarding its education requirements, and processes in place for distributing them.

Motion by Ms. Ishak to approve the report of the State Open Meetings Law Compliance Board on the cost-benefit analysis and contact lists and its conclusions, subject to counsel filling in a dollar amount. Seconded by Ms. Grasmick.

Motion passed unanimously.

2b. Method for posting violations to the Act. Counsel described the method that the Board will use to post violations of the Act and said that there have been no violations to post since July 1, when the requirement took effect. Board members discussed this process and agreed that the method is good and there is no need for changes at this time.

2c. Process for commenting on pending legislation. Chairman Hodgson provided some background on previous procedures for the Board on its process for commenting on legislation. He noted that it may be necessary for the Board to have a standing position regarding legislation that is moving quickly and that the Board has been asked to comment on. He suggested that the Board's counsel can be provided a standing advice/default position for times when it hasn't had a chance to review the language. Board members agreed that careful consideration should be given to all legislation impacting the Act before the Board takes a position. The goal, they noted, is thoughtful and consistent legislation.

Motion by Ms. Grasmick. That Counsel be given the authority to respond to questions to the Open Meetings Compliance Board regarding its position on pending legislation. The response will be, "The Board's position is to oppose any changes to the Act if it has not had a chance to review the legislation." Motion Seconded by April Ishak. **Motion passed unanimously.**

3. Discussion of issues to study or recommend for legislative action. Chairman Hodgson asked for Board members and members of the public to discuss the need for new legislation regarding the Open Meetings Act. Board members indicated that they had no recommendations for changes. Mr. Peck noted that the Maryland Municipal League will be asking the legislature to add the sale of property to the permitted reasons for closed meetings. Current requirements include buying but not selling.

4. Review of draft of the 25th Annual Report of the Board. A draft of the report was distributed to the meeting participants. Chairman Hodgson asked for comments from Board members. It was noted that the draft responds to changes in the Act by identifying the number of opinions that had violations and the number of times there were violations. Board members discussed the impact of the change and its burden on staff. Board members discussed the number of violations versus number of opinions and asked staff if the report is consistent with past experience. Staff did not find this year to be unusual.

The Chairman opened the discussion to the public and asked for reports of anxiety among public bodies regarding complaints. MACo noted that counties take the Open Meetings Act complaints seriously and do not like to have complaints made. Mr. Knapp added that he had not heard about any frustration with the Board regarding complaints but that some frustration had been raised regarding repeat complainants.

There was specific concern regarding open meeting complaints for meetings over a year old, especially where the public body has shown that it has made changes. Chairman Hodgson stated that advice on old violations is often without educational value because membership in the public body may have changed since the date of the alleged violation. He asked, "Does the Board need a policy regarding complaint limitations in terms of how long ago a meeting took place?" Board and public members discussed the public value of these complaints, cost to the public bodies, and the educational purposes of the Open Meetings Compliance Board. Counsel mentioned that a limitations proposal had been considered by the General Assembly about six years ago, but that it was unsuccessful because for serious notice violations, the public might not even be aware of a meeting within one year. Ms. Ishak wondered whether the proposed language had included an exception for meetings that could not have been discovered, and counsel responded that she believed that the bill had not contained such an exception. It was noted that generally the legislature is reluctant to limit what the Board considers. Board members noted that abuse of the complaint process discredits it. The Board noted that it has the discretion to address the problem case-by-case, that the integrity of the process should be preserved, and that it will keep an eye on the issue in the coming year but not propose any change to the Act this year.

Motion by Rachel Grasmick, to adopt the 25th Annual Report of the Open Meetings Compliance Board. Motion Seconded by Ms. Ishak. **Motion passed unanimously.**

5. **Public comments.** No additional public comments were made.

6. **Closing remarks.** Chairman Hodgson thanked everyone for attending and closed the meeting with congratulations to Mr. Knapp for his upcoming marriage ceremony. He also noted the merit of the recommendations regarding legislative changes for a time limitation component for complaints. He asked members of the public to feel free to weigh in with the board on this issue.

Motion to Adjourn by Ms. Ishak. Seconded by Ms. Grasmick. **Motion passed unanimously.** Meeting was adjourned at 12:21 pm.