

**M E M O R A N D U M**

February 27, 2023

TO: Government Operations & Fiscal Policy Committee

FROM: Christine Wellons, Senior Legislative Attorney

SUBJECT: Bill 8-23, Committees, and Commissions – Open Meetings – Supplemental Requirements

PURPOSE: Committee Worksession – recommendations expected

**Expected Attendee**

Ken Hartman Espada, Director of Strategic Partnerships,  
Office of the County Executive

Bill 8-23, Committees, and Commissions – Open Meetings – Supplemental Requirements, sponsored by Lead Sponsor Councilmember Luedtke and Co-Sponsors Councilmember Katz and Council President Glass, was introduced on February 14, 2023. A public hearing is scheduled for February 28 at 1:30 p.m. and a Government Operations and Fiscal Policy (GO) Committee worksession is tentatively scheduled for March 2, 2023.

Since this staff report is being submitted prior to the public hearing on February 28, staff will provide an addendum to the report after the hearing takes place.

Bill 8-23 would:

- (1) require boards, committees, and commissions to publish, within certain timeframes, the dates, times and locations of meetings, meeting agendas, and meeting minutes;
- (2) require boards, committees, and commissions to make meeting recordings available under certain circumstances;
- (3) require the posting of draft meeting minutes under certain circumstances;
- (4) require certain reporting by the Office of the County Executive to the Council; and
- (5) generally amend the laws regarding boards, committees, and commissions and regarding open meetings.

## **BACKGROUND**

Under state law, “public bodies” – which include all boards, committees, and commissions of the County, must adhere to open meeting requirements. The County has over 80 boards, committees, and commissions (BCCs). Those BCCs are subject to Article XI, Chapter 2 of the County Code, in addition to being subject to the state Open Meetings Act.

Bill 8-23 would amend Article XI, Chapter 2 of the Code to further govern the operation of BCCs in the County. These amendments would be intended to enhance existing open meetings and procedural requirements.

## **BILL SPECIFICS**

The bill would generally require a BCC – in addition to following the transparency requirements of the state Open Meetings Act and the procedural requirements of Article XI, Chapter 2 of the County Code – to take the following steps regarding meeting notices, agendas, and minutes:

- publish notice of meetings within 5 business days after the group has determined the meeting date, and at least 2 calendar days before the meeting;
- publish meeting agendas within 5 business days after the group has determined the agenda; and at least 2 calendar days before the meeting; and
- within 5 days after it meets, publish either a recording of the meeting (if the meeting was recorded), or draft meeting minutes (if the meeting was not recorded). The draft minutes, if applicable, would be replaced by the approved minutes within 5 days after approval of the minutes.

The bill also would enable members of the public and BCC members to submit complaints to the Office of Community Partnerships in the event that a BCC violates the supplemental requirements under the bill. The Office of Community Partnerships would endeavor to resolve the complaint, and the Office quarterly would submit a report to the Council regarding the complaints and their resolutions.

## **SUMMARY OF PUBLIC HEARING**

The summary will be provided via addendum since the public hearing is scheduled after this staff report is due.

## **SUMMARY OF IMPACT STATEMENTS**

The Economic Impact Statement and the Racial Equity and Social Justice Impact Statement are not yet available. According to the Fiscal Impact Statement, Bill 8-23 is not expected to affect County revenues or expenditures.

## ISSUES FOR THE COMMITTEE’S CONSIDERATION

### 1. Legal Framework and Other Jurisdictions

Under the Open Meetings Act (OMA), each state and local public body in Maryland must adhere to certain transparency requirements, including generally: (1) holding meetings in public; (2) providing reasonable notice and publishing agendas in advance of meetings; and (3) providing written minutes of meetings. Md. Code Ann., General Provisions § 3-101 *et seq.*

For general information about the OMA requirements, *see Open Meetings FAQs – A Quick Guide to Maryland’s Open Meetings Act*, Office of the Attorney General, [https://www.marylandattorneygeneral.gov/OpenGov%20Documents/Openmeetings/OMA\\_FAQ.pdf](https://www.marylandattorneygeneral.gov/OpenGov%20Documents/Openmeetings/OMA_FAQ.pdf)

With regard to certain public bodies in the state, transparency requirements in addition to the OMA apply. For example, in Baltimore City, local law requires public bodies to publish their meeting notices, and to submit their written minutes, within certain timeframes to the City’s Department of Legislative Reference. *See* Baltimore City Code §§ 6-4 and 6-5, [https://legislativereference.baltimorecity.gov/sites/default/files/Art%2001%20-%20MayorCouncil%20\(rev%202022.08.20\).pdf](https://legislativereference.baltimorecity.gov/sites/default/files/Art%2001%20-%20MayorCouncil%20(rev%202022.08.20).pdf).

In particular, Baltimore City law requires City public bodies to provide its meeting notices to the Department of Legislative Services at least 7 days in advance. Notice of emergency meetings must be provided “as soon as possible”. Minutes must be submitted to the Department of Legislative Services within 7 days after a meeting has taken place.

The General Assembly also has required certain public bodies to follow requirements in addition to the OMA requirements. For example, under the Maryland State Agency Transparency Act of 2022 (Chapter 346 of the 2022 Laws of Maryland), various agencies – including the State Board of Elections and the Maryland Stadium Authority – must publish agendas at least 48 hours in advance of a meeting or, in an emergency, “as far as advance of the meeting as practicable”. Minutes of meetings must be published not more than two business days after the minutes are approved. <https://mgaleg.maryland.gov/mgaweb/Legislation/Details/sb0269/?ys=2022rs>

### 2. Open Meetings Compliance Board Decision re: County BCCs

The Open Meetings Compliance Board (OMCB) is a body appointed by the Governor to issue advisory opinions in response to written complaints about violations of the Open Meetings Act.

In August 2022, OMCB found issued an opinion finding OMA violations by several County BCCs. In particular, OMCB “conclude[d] that several bodies violated the Act, by failing to provide reasonable advance notice of meetings, by failing to provide the public information on how to access virtual meetings, by failing to retain meeting notices, by failing to make agendas available to the public or by failing to do so in a timely manner, and by failing to prepare minutes or post them online when it was practicable to do so.”

Specific OMCB findings included:

- *Notices.*
  - “The County acknowledges that several bodies—including the Criminal Justice Coordinating Commission, the Silver Spring Transportation Management District Advisory Committee, and the Friendship Heights Transportation Management District Advisory Committee—violated the Act by failing to provide the public information on how to access virtual meetings. Thus, we find that these bodies violated § 3-303 of the Act.”
- *Agendas.*
  - “We do, however, find that the Firearm Safety Committee violated § 3-302.1(a), based on the County’s concession that this body failed to prepare any agendas for its meetings. The Alcoholic Beverages Advisory Board and the Commission on Common Ownership Communities violated the same provision when technical glitches made certain agendas unavailable to the public.”
  - “The County concedes that the Commission on Child Care often did not finalize its agenda until the same day as a meeting and, thus, failed to meet the 24-hour deadline set forth in § 3-302.1(a). The same is true of the Citizens Review Panel for Children, which sometimes did not upload agendas to the Google drive until the morning of a meeting, and the Local Management Board for Children, Youth, and Families, which made agendas available only during meetings. The County also concedes that the Climate, Energy, and Air Quality Advisory Committee failed to timely make its agenda available in January 2022. We thus find violations of the timing requirement of § 3-302.1(a) with respect to these bodies.”
- *Minutes.*
  - The County concedes that the Committee to Recommend Funding for the Public Election Fund did not post minutes for meetings in January 2020, December 2020, and September 2021, despite posting other minutes online. We understand this to be a concession that it was practicable for the Committee to have posted the missing minutes online and, based on that understanding, we find a violation of § 3-306(e)(2). Several other bodies—the Firearm Safety Committee, the Western Montgomery County Citizens Advisory Board, the White Flint Downtown Advisory Committee, and the Silver Spring Urban District Advisory Committee—failed to prepare any minutes in the first place, a violation of § 3-306(b), which provides that, “as soon as practicable after a public body meets, it shall have minutes of its session prepared.”

The full opinion is available at:

<https://www.marylandattorneygeneral.gov/Opinions%20OMCB%20Documents/Vol16/16OMCB163.pdf>.

### **3. Potential Amendment – Which office or department should receive complaints?**

Under the bill as originally drafted, the Office of Community Partnerships would receive complaints regarding compliance with the bill's requirements. The Committee might wish to ask the Office of the County Executive whether the Office of Community Partnerships or a different office or department would be best suited to address these complaints.

To provide the Executive with greater flexibility to identify the office or department that would receive complaints, the Committee could adopt the following amendment.

*Amend lines 50-58 as follows.*

- (2) A group member, or member of the public, may complain to [[the Office of Community Partnerships]] an office or department designated by the County Executive if a group does not comply with the requirements of this section.
- (3) The [[Office of Community Partnerships]] designated office or department:
  - (A) may consult with the group, and staff assigned to the group, to address compliance issues; and
  - (B) must report in writing to the Council, on a quarterly basis, regarding complaints received under this section and the resolutions of those complaints.

#### **4. Potential Amendment – Declared emergencies**

Under the bill, an agenda for an emergency meeting must be published at least 24 hours in advance of the meeting. The Committee might wish to amend the bill to add that in the event of a *declared emergency*, the agenda must be published *as soon as practicable*. This would account for the rare circumstance in which a BCC might need to meet with less than 24 hours advance notice.

A potential amendment would be:

*After line 33, insert the following.*

- (3) If the requirements of paragraph (2) cannot be met due to an emergency declared by the Governor of Maryland or the County Executive, a group must:
  - (A) publish the agenda as soon as practicable in advance of the meeting; and
  - (B) indicate on the agenda that the meeting is an emergency meeting.

## **5. Potential Amendments – Clarifying / technical amendments**

The Committee might wish to adopt the following clarifying amendments.

*Amend lines 34-35 as follows.*

(d) Meeting minutes and recordings.

(1) Within 5 business days after it meets, a group must publish:

*Amend lines 53-55 as follows.*

(3) The Office of Community Partnerships:

(A) may consult with the group, and staff assigned to the group, to address compliance issues under this Section; and

*After line 58, add the following.*

(4) Nothing in this Section prevents an individual from submitting a complaint to the state Open Meetings Compliance Board under the state Open Meetings Act, Title 3 of the General Provisions Article of the Maryland Code, as amended.

**Next Step:** Committee recommendation on whether to enact Bill 8-23, including any amendments.

This packet contains:

Bill 8-23

Fiscal Impact Statement

Circle #

1

5

Bill No. 8-23  
Concerning: Boards, Committees, and  
Commissions – Open Meetings –  
Supplemental Requirements  
Revised: 02/23/23 Draft No. 3  
Introduced: February 14, 2023  
Expires: December 7, 2026  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmember Luedtke  
Co-Sponsor: Councilmember Katz and Council President Glass

### AN ACT to:

- (1) require boards, committees, and commissions to publish, within certain timeframes, the dates, times and locations of meetings, meeting agendas, and meeting minutes;
- (2) require boards, committees, and commissions to make meeting recordings available under certain circumstances;
- (3) require the posting of draft meeting minutes under certain circumstances;
- (4) require certain reporting by the Office of the County Executive to the Council; and
- (5) generally amend the laws regarding boards, committees, and commissions and regarding open meetings.

By adding

Montgomery County Code  
Chapter 2. Administration  
Section 2-149A

*The County Council for Montgomery County, Maryland approves the following Act:*

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

1           **Sec. 1. Section 2-149A is added as follows:**

2    **2-149A. Open meetings – supplemental requirements.**

3           (a)    Open Meetings Act – additional requirements. A group must comply  
4                   with the requirements under this section, in addition to the requirements  
5                   under the state Open Meetings Act, Title 3 of the General Provisions  
6                   Article of the Maryland Code, as amended.

7           (b)    Notices of meetings.

8                   (1)    Except as provided under paragraph (3), a group must publish the  
9                           notice required under Section 3-302 of the Open Meetings Act:

10                    (A)   within 5 business days after the group has determined the  
11                           meeting date; and

12                    (B)   at least 2 calendar days before the meeting.

13                   (2)    If a meeting will include virtual access, the group must publish  
14                           how the public may attend the meeting virtually.

15                   (3)    If the requirements of paragraph (1) cannot be met due to an  
16                           emergency, a group must:

17                    (A)   publish the notice at least 24 hours in advance of the  
18                           meeting; and

19                    (B)   indicate in the notice that the meeting is an emergency  
20                           meeting.

21           (c)    Meeting agendas.

22                   (1)    Except as provided under paragraph (2), a group must publish the  
23                           agenda of a meeting under Section 3-302.1 of the Open Meetings  
24                           Act:

25                    (A)   within 5 business days after the group has determined the  
26                           agenda; and

27                    (B)   at least 2 calendar days before the meeting.



(2) If the requirements of paragraph (1) cannot be met due to an emergency, a group must:

(A) publish the agenda at least 24 hours in advance of the meeting; and

(B) indicate on the agenda that the meeting is an emergency meeting.

(d) Meeting minutes and recordings.

(1) Within 5 days after it meets, a group must publish:

(A) if the group recorded the full meeting, a file of the recording, or a link to the recording; or

(B) if the group did not record the full meeting, draft meeting minutes.

(2) Within 5 business days after approving meeting minutes, a group must:

(A) publish the approved minutes under Section 3-306 of the Open Meetings Act; and

(B) if draft minutes of the meeting were published under paragraph (1), remove the draft minutes.

(e) Compliance and reporting requirements.

(1) The County department or office assigned to staff a group must ensure the group's compliance with the requirements of this section.

(2) A group member, or member of the public, may complain to the Office of Community Partnerships if a group does not comply with the requirements of this section.

(3) The Office of Community Partnerships:

- 54                    (A) may consult with the group, and staff assigned to the  
55                    group, to address compliance issues; and  
56                    (B) must report in writing to the Council, on a quarterly basis,  
57                    regarding complaints received under this section and the  
58                    resolutions of those complaints.

# Fiscal Impact Statement

Office of Management and Budget

## Bill 8-23

## Boards, Committees, and Commissions - Open Meetings - Supplemental Requirements

### Bill Summary

Bill 8-23 adds supplemental procedural requirements that boards, committees, and commissions (BCCs) must follow regarding open meetings. Specifically, the bill requires BCCs to publish notice of meetings, meeting agendas, and meeting minutes and/or recordings within specified time frames.

### Fiscal Impact Summary

The bill is not expected to impact County revenues or expenditures.

Fiscal Year	2023	2024	2025	2026	2027	2028	Total
Personnel Costs	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Operating Expenses	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Expenditures	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Revenues	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Impact	\$0	\$0	\$0	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00	0.00	0.00	

### Fiscal Impact Analysis

Altering procedural requirements for BCCs would not impact County revenues or expenditures. However, there could be an operational impact due to the expedited requirements of publishing meeting notices, agendas, and meeting minutes or recordings.

### Staff Impact

Altering procedural requirements for publishing meeting notices, agendas, and meeting minutes or recordings could have an operational impact on BCCs and the departments that staff them. However, any impact is expected to be minimal and could be absorbed within the existing workloads of the staffing departments.

### Actuarial Analysis

The bill is not expected to impact retiree pension or group insurance costs.

### Information Technology Impact

The bill is not expected to impact the County Information Technology (IT) or Enterprise Resource Planning (ERP) systems.

### Other Information

*Later actions that may impact revenue or expenditures if future spending is projected*

The bill does not authorize future spending.

### Contributors

Abdul Rauf, Office of Management and Budget  
Taleah Parker, Office of the County Executive



**ADDENDUM**

GO Item #3  
March 2, 2023  
**Worksession**

**M E M O R A N D U M**

February 28, 2023

TO: Government Operations & Fiscal Policy Committee

FROM: Christine Wellons, Senior Legislative Attorney

SUBJECT: Bill 8-23, Committees, and Commissions – Open Meetings – Supplemental Requirements

PURPOSE: Committee Worksession – recommendations expected

A public hearing on Bill 8-23 was held on February 28, 2023. Enclosed are copies of the written testimony the Council received regarding the bill.

This packet contains:

County Executive Memorandum  
League of Women Voters testimony

Circle #

A1  
A3




OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich  
*County Executive*

M E M O R A N D U M

February 28, 2023

TO: Evan Glass, President  
Montgomery County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Bill 8-23, Board, Committees, and Commissions – Open Meetings –  
Supplemental Requirements

Thank you for this opportunity to provide testimony regarding Bill 8-23, Boards, Committees, and Commissions – Open Meetings – Supplemental Requirements. While I believe this Bill is not required, I appreciate the issues raised by Councilmember Luedtke, and assure the Council that compliance by the County's Boards, Commissions, and Committees (BCCs) with the State Open Meetings Act is my priority.

A year ago, the Open Meetings Compliance Board informed the County about a complaint alleging that County Boards, Commissions, and Committees (BCCs) were in violation of some combination of one of four requirements of the Open Meetings Act: 1) no listed meeting access information to observe the public meeting; 2) no meeting notice information on the public website; 3) no listed meeting agenda information on the public website; and 4) no meeting minutes published on the public website.

Due to COVID and the large number of BCCs in the County, some BCCs did fall into areas of noncompliance. My office is ensuring that all BCCs come into full compliance with the Act.

We have reminded our department staff that meeting notices must be posted on the BCC Trumba calendar for at least six months. Meeting agendas must be made available at the same time as the meeting notice is posted if the agenda has been determined. If an agenda has not been determined at the time the meeting notice is posted, the agenda must be made available no later than 24 hours before the meeting. If the BCC has a website, the agenda should be posted there.

Meeting minutes and recordings of meetings must be kept for five years. We promote the Council's minutes as a format for our BCCs to follow. Recordings of meetings are not required, but staff must keep the recordings for 5 years. Subcommittees are subject to the open meetings act only if the subcommittee is established in the BCC's enabling document or bylaws.

All BCC members (including ex officio members) and staff are required to take Open Meetings Act training within 90 days of their confirmation or assignment to a BCC. The training takes approximately 2-1/2 hours and consists of six training lessons. At completion of the training, each member receives a certificate that they must upload to the BCC webpage.

Overseeing compliance of more than 90 BCCs is challenging. We rely greatly on our departments to provide timely support to the BCCs. Moving forward, while we already require notices of BCC meetings to be posted on our central calendar, we plan to create a central public repository for BCC agendas and minutes.

Should the Council enact Bill 8-23, I recommend removing the requirement for draft minutes to be posted within five days of a meeting. A five-day publication of draft minutes is not a standard expected by Open Meetings Act or followed by our elected public bodies. This provision in the Bill will create additional pressure on BCC staff to produce draft minutes that would not satisfy any requirement for meeting minutes under the Open Meeting Act and may contain inaccuracies.

Additionally, the Office of the County Executive is the point of contact for complaints about BCC compliance with the Open Meetings Act. It should be noted that complaints may also be taken to the Open Meetings Board and those are already publicly posted on the OMCP website.

Finally, please note Bill 8-23 only applies to BCCs administered by the Executive Branch. Legislative Branch or MNCPPC advisory Committees would not be covered by its requirements. I recommended that local standards for BCCs that differ from the State Open Meeting Act should apply to all County agencies.

**Testimony to the Montgomery County Council**

**Hearing Date: February 28, 2023**

**In re: Bill 8-23, Boards, Committees, and Commissions - Open Meetings -  
Supplemental Requirements**

**Position: Support**

As you all know, this bill would require boards, committees, and commissions to provide more information to the public both in advance of meetings and as a result of meetings.

Specific examples include the following: publish, within certain timeframes, the dates, times and locations of meetings, meeting agendas and meeting minutes; require boards, committees and commissions to make meeting recordings available under certain circumstances; require the posting of draft meeting minutes under certain circumstances; require certain reporting by the Office of the County Executive to the Council; and generally amend the laws regarding boards, committees and commissions and regarding open meetings.

LWVMC believes that government should be as open as possible to the people it serves and should certainly make it easier for us to ascertain plans and results.

Vicky Strella and Nancy Bliss, co-presidents

Joan Siegel and Linda Silversmith, co-vice-presidents for advocacy