

BILL: Senate Bill 590
TITLE: Public Information Act – Revisions
DATE: February 13, 2020
POSITION: SUPPORT WITH AMENDMENTS
COMMITTEE: Education, Health, and Environmental Affairs
CONTACT: John R. Woolums, Esq.

The Maryland Association of Boards of Education (MABE), representing all of the state's local boards of education, supports Senate Bill 590 with the amendments outlined below. Local boards, county governments, and municipalities agree that with the adoption of requested amendments this legislation can advance the State's role in resolving disputes arising under the Public Information Act.

MABE recognizes that this bill represents the evolution of the recently created Public Information Act Compliance Board (Compliance Board), and the recommendations of the Compliance Board following the 2019 legislative session. The law creating the Compliance Board passed in 2015, and since that time the duties of the Board have included:

- Receiving, reviewing, and resolving complaints that a custodian of public records charged an unreasonable fee that exceeds \$350;
- Issuing a written opinion regarding whether a violation has occurred relating to a fee, including the ability to direct a reduction of a fee or a refund of the portion of a fee that was unreasonable;
- Studying ongoing compliance with the PIA by custodians of public records; and
- Making recommendations to the General Assembly for improvements to the PIA.

Local boards of education support this statutory framework, and MABE requests amendments to the proposed bill to preserve much of the current process in order to avoid adopting an unduly litigious approach to administering and resolving disputes arising from public information requests. The proposed expansion of the Compliance Board's authority will foreseeably result in school systems being involved in a significantly greater number of disputes which will involve submissions, exhibits and appearances or involvement in conferences. All of these activities will require staff time and in many cases the need for legal counsel, and result in additional costs to school systems that may be avoidable if certain amendments are adopted.

For example, MABE requests an amendment to remove the ability of the Compliance Board to waive a fee if a custodian's response is merely late, or in cases where the custodian has filed a complaint against the applicant. MABE seeks further clarification of the provisions requiring custodians to provide records or indexes of records in dispute to the compliance board for review. It appears that the Compliance Board's duty to maintain confidentiality extends only to records it deems to not be public records. Local boards seek additional legal protection from any claims that we, through this process, disclosed confidential information that was later made public by the Compliance Board. Lastly, in light of the dramatic expansion of the scope of the Ombudsman's and Compliance Board's authority, need for implementing regulations, MABE requests that the effective date be amended to October 1.

Local school systems take very seriously the responsibility to comply with the Maryland Public Information Act, which is intended to grant the public a broad right of access to records that are in the possession of State and local government agencies, including local boards of education. Each school system is responsible for managing and maintaining an enormous amount information, including public records, but also including student records, and records not subject to inspection or access under state or federal laws. Restriction of public access to records maintained by local school systems is already limited in other circumstances under state law. For example, there is an affirmative duty to deny access to county board records that are legally confidential, such as pursuant to lawyer-client privilege.

The law additionally provides for required denial for personnel files, letters of reference, retirement records, or individual student records. Other required denials are for medical and psychological records, home addresses and telephone numbers of employees, individual financial records, and records of information system security. Finally, a local board may deny access to records where disclosure would be contrary to the public interest, such as, investigation records, security records, testing records, and real estate appraisals while acquisition is pending.

Local boards appreciate the necessary balance of ensuring that governmental entities are delivering on the promise of transparency in governance and administration and the need for reasonable limitations on obligations to expend limited time and resources to respond to frivolous requests. Therefore, MABE appreciates the provision clarifying that custodians of records are permitted not to respond to requests deemed to be frivolous, vexatious, or in bad faith.

Therefore, MABE requests a favorable report on Senate Bill 590 with the amendments described above.