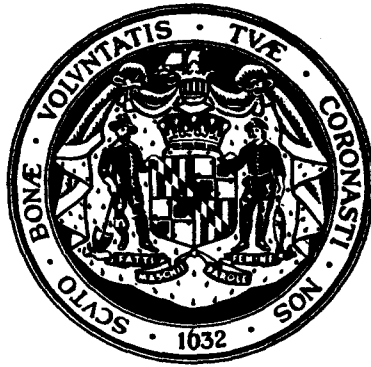


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**REPORT**  
**TO**  
**THE GENERAL ASSEMBLY OF 1976**  
**PROPOSED BILLS**



**LEGISLATIVE COUNCIL OF MARYLAND**

**SENATE CONSTITUTIONAL**

**AND**

**PUBLIC LAW COMMITTEE**

**1975. REPORT**

**to the**

**LEGISLATIVE COUNCIL OF MARYLAND**



Annapolis, Maryland

CONSTITUTIONAL AND PUBLIC LAW COMMITTEE REPORT

THE SENATE CONSTITUTIONAL AND PUBLIC LAW COMMITTEE

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SUE DOWDEN - Administrative Assistant  
RICHARD E. ISRAEL - Committee Counsel

## CONSTITUTIONAL AND PUBLIC LAW COMMITTEE REPORT

Report of  
Senate Constitutional and Public Law Committee  
to the Legislative Council  
November 25, 1975

The Legislative Council assigned the following matters to the committee for its consideration:

- Item 2-1 Automotive Repair Facilities (S.B. 858, H.B. 1352)
- Item 3-1 Consumer Product Warranty Act (S.B. 859)
- Item 3-4 Legal Rate of Interest (S.B. 609)
- Item 5-3 Interception of Communications (H.B. 307)
- Item 6-4 Illegal Surveillance (S.B. 780)
- Item 6-6 Monitoring Telephone Communications (H.B. 768)
- Item 7-5 Higher Education Due Process (S.B. 924, H.B. 1687)
- Item 11-12 Legislators' Requests for Information
- Item 11-13 Lobbying (H.B. 289)
- Item 15-2 Public Employment Relations (S.B. 593, H.B. 634, H.B. 949, H.B. 990, H.B. 995)
- Item 21-16 Human Relations Commission (H.B. 186 - Trial Examiner)
- Item 21-17 Human Relations Commission (S.B. 288 - Money Damages)
- Item 21-18 Human Relations Commission (H.B. 233 Judicial Review)
- Item 23-1 Parking Ticket Liability (S.B. 566)
- Item 24-11 Public Information Disclosure (S.B. 1101)
- Item 24-12 Open Meetings (S.B. 145, H.B. 400, H.B. 844)
- Item 24-13 Special Policemen (S.B. 778)

The committee held hearings on all of these items except Items 5-3, 6-4 and 6-6, which are related to the committee's investigation of the Baltimore City Police

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Department. The committee made the following disposition of the items assigned to it.

Favorable Reports:

Item 2-1 Automotive Repair Facilities

The bill recommended by the committee amends the existing automotive repair facilities law to require that each facility post a sign advising customers of their right to a written estimate on repair work costing more than \$50. While there is already a right to such an estimate, there is no requirement that a facility publicize this fact. The committee felt that many customers may not know that they have a right to such an estimate. Requiring facilities to post a sign would be one way to inform customers of this right.

Two automotive repair facilities bills from the last Session, S.B. 858 and H.B. 1352, were referred to the committee. The two bills were almost identical. The bills proposed three significant changes in the existing automotive repair facilities law in (1) requiring facilities to post a sign advising customers of their right to a written estimate, (2) lowering from \$50 to \$25 the threshold cost at which there is a right to a written estimate, and (3) providing for the registration of repair facilities. While the committee accepted the first change, the committee rejected the other two. With respect to the second change, it was felt that the \$50 figure was more realistic as so little significant repair work could be done for less than this amount. With respect to the third change, it was felt that a registration system might mislead customers into thinking the facility was approved by the State. Also, there was no evidence that a costly registration system would really benefit customers.

Item 11-12 Legislators' Requests for Information

The bill recommended by the committee provides that upon a written request to an Executive or Independent agency by a Member of the General Assembly for specific information for a legislative purpose, the agency shall supply the information or, if it does not have the information, so inform the Member and advise him of its location, if known. In responding to a request for information, the agency is authorized to delete material to protect the privacy of particular individuals so long as the deletions do not substantially impair the usefulness of the information. Upon a refusal to supply information, the House in which the Member sits or, if that House is not in Session, the Legislative Council may

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subpoena the requested information.

The Bill is the result of a study by the committee of problems which may arise when an individual Member of the General Assembly requests information from a State agency. The Legislative Council asked that the committee study this matter. It was reported to the committee that there have been instances in which requests by individual Members for information from State agencies have been refused. The committee also reviewed a one-signature Attorney General's opinion which stated that individual Members of the General Assembly, as distinguished from legislative committees or the Legislative Council, have no greater standing than members of the general public in requesting information from State agencies.

The committee felt that individual Members of the General Assembly should have direct access to information in the custody of State agencies. It was felt that Members may not know the location of particular information. Hence the requirement that an agency which does not have the requested information must advise the Member of its location, if known. On the other hand, it was realized that the right to request information should not be unfettered. The committee understood that responding to requests might become burdensome. Accordingly, requests must be for specific information. It was also realized that the right to request information might be abused. Hence, requests must be for a legislative purpose and an agency has authority to protect the privacy of individuals.

Item 11-13 Lobbying

The recommended bill generally revises the law relating to lobbying. The bill makes five basic changes in the existing law. First, the law is extended to cover lobbying directed at Executive and Independent agencies. The present law concerns lobbying of the Legislative Branch. Second, employers as well as lobbyists must register with the Secretary of State. While lobbyists must now supply certain information concerning their employers, only the lobbyists are actually required to register. Third, employers and lobbyists must submit semi-annual reports on their activities rather than annual reports as under the present law. Moreover, unlike the present law these reports must list lobbying expenditures by various categories and must list the beneficiaries of gifts with a cumulative value of \$100 and each gift of \$10 or more thereafter. Fourth, the bill establishes the Maryland Public Disclosure Board to issue advisory opinions, to review and investigate the reports of registrants, and to report violations to the

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Attorney General who is authorized to seek injunctive relief against violators. The Attorney General may also seek injunctive relief as the result of other complaints. Fifth, the criminal penalty is lengthened from six months to one year.

The recommended bill is based on H.B. 289 which was referred to the committee. In its consideration of the bill, the committee realized that there is a Constitutional right to petition the Legislature for redress of grievances and that lobbyists often provide useful information which improves the quality of governmental decisions. Nevertheless, the committee felt that the present law needed to be strengthened to require greater disclosure of money spent by lobbyists and their employers while seeking to influence the governmental process. Hence, the reason for requiring the registration of employers and the extensive reporting requirements. The committee also felt that given the broad powers of Executive and Independent agencies, lobbying directed at these agencies should be covered.

The committee worked from the third reader version of H.B. 289. In its consideration of this measure, the committee adopted various amendments, including amendments to exempt persons representing religious organizations and those lobbying county and municipal governments from the bill; to add meals and beverages, special events, and gifts as categories of expenditures on legislative or executive officials which are to be reported; to lower from \$25 to \$10 the value of gifts which are to be counted in reaching the threshold amount of \$100 which is to be reported by beneficiary; to delete a requirement for reporting other expenditures of \$100 or more, by beneficiary; and to delete requirements for reporting political contributions.

Items 21-16, 21-17 and 21-18 Human Relations Commission

Three bills were referred to the Committee, H.B. 186 (Item 21-16) to provide the Human Relations Commission with a trial examiner; S.B. 288 (Item 21-17) to authorize the Commission to award money damaged for lost wages in employment cases and to seek a judicial award in other cases; and H.B. 233 (Item 21-18) to revise the law concerning judicial review of the Commission's cases so that such review takes place only under the Administrative Procedure Act and not in an enforcement proceeding. The Committee has drafted a single bill which incorporates the substance of the three bills and also generally revises the Commission's procedures for hearing and disposing of discrimination cases. In revising the Commission's procedures, present law has

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been amended to require that personal complaints set forth "particular acts of discrimination." This requirement of specificity is repeated with respect to the subsequent stages of the proceeding. The present law has also been clarified to explicitly authorize commission complaints against patterns or practices of discrimination against groups or classes. Such complaints may be issued on a finding of "reasonable cause."

Under the recommended bill, the respondent must be served with a copy of the complaint. Unlike the present law, the recommended bill sets out time limits for various stages of the proceedings: six months to file personal complaints and commission complaints concerning particular discriminatory acts; one year to file commission complaints concerning patterns or practices of discrimination; 30 days to serve the complaint; six months to investigate personal complaints; one year to investigate commission complaints; 120 days for conciliation; and hearing within 60 days of notice. As part of the investigation, the Commission may issue subpoenas for records of a respondent. Such subpoenas are judicially enforceable.

The determination of probable cause is to be made by the executive director with the advice of legal counsel. In the event that there is conciliation, the conciliation agreement is not regarded as an admission of the facts alleged. If the matter is the subject of a hearing, a statement of charges must be prepared prior to the hearing. In preparing for a hearing, the respondent is given access to the Commission's subpoena power. The hearing itself may be before a hearing tribunal, as under existing law, or a trial examiner. At the hearing, the respondent's counsel is accorded the procedural rights accorded the Commission's General Counsel. Upon a finding of unlawful discrimination, the order of a hearing tribunal or trial examiner may, in the cases of employment discrimination, award actual damages for lost wages, and may also direct the General Counsel to seek a judicial award of other actual damages. The findings, conclusions and orders of hearing tribunals and the trial examiner are subject to Commission review but, if not reviewed, are automatically the findings, conclusions and orders of the Commission. The Commission's orders are subject to judicial review under the Administrative Procedure Act. Unlike the present law, such review may not take place in an enforcement proceeding. An enforcement proceeding may not be commenced until the disposition of appeals under the Administrative Procedure Act. Finally, there is a provision that the confidentiality requirement may be judicially enforced.



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The bill is to apply only to cases filed on or after July 1, 1976. However, the trial examiner may hear cases filed before, on, or after this date.

The Committee held a lengthy hearing on the three bills which were referred to it. In favor of H.B. 186, it was argued that a trial examiner is needed to hear some of the Commission's cases because it has become burdensome for panels of unsalaried commissioners to conduct these hearings and a considerable backlog of cases has developed at the hearing stage. In favor of S.B. 288, it was argued that the discrimination statute should be not merely prohibitory in character but also remedial. In remedying the effects of discrimination, the Commission should at least have the authority to award money damages for lost wages in employment discrimination cases. The bill was needed because the Court of Appeals in Gutwein v. Easton Publishing Co., 272 Md. 563, 325 A.2d 740 (1974) found that the statute is only prohibitory in nature and that the Commission does not have the authority to remedy the effects of discrimination by awarding money damages. In favor of H.B. 233, it was argued that under the present law a respondent may have judicial review of a Commission proceeding under the Administrative Procedure Act and in an enforcement proceeding while a complainant may have review only under the Administrative Procedure Act. Moreover, there may be two simultaneous proceedings, a proceeding in law under the Administrative Procedure Act and a proceeding in equity for enforcement. Under H.B. 233, judicial review would take place only under the Administrative Procedure Act.

In the course of the hearing on the three bills, opposition was directed not at the bills as such but at any enlargement of the Commission's authority. It was argued, mainly by the State Chamber of Commerce, that the Commission should not have any additional authority until alleged abuses in the exercise of its present authority are curbed. The Chamber subsequently submitted legislative proposals to require greater specificity in complaints and the proceedings; to set time limits on various stages of the proceedings; to require the Commission's General Counsel to determine probable cause; and to require the preparation of a statement of charges prior to conciliation. The General Counsel submitted rule and, subsequently, legislative proposals which modified the Chamber's specificity and time limit requirements, provided simply for a legal determination of probable cause, and provided for the preparation of a statement of charges after the conciliation effort.

The Committee reviewed the three bills and various

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proposals for procedural changes and decided to draft a single bill incorporating the substance of the three bills and making substantial changes in the Commission's procedures. In requiring greater specificity in complaints and the ensuing proceeding, the Committee felt that the proceedings would be expedited and better focused, thus benefiting complainants and respondents. The Committee was, however, very much aware of the value of investigations of systematic discrimination. Accordingly, the bill specifically authorizes the Commission to issue, upon a finding of reasonable cause, complaints against patterns or practices of discrimination. In requiring that respondents be served with complaints, findings on which probable cause is based, and a statement of charges, prior to the hearing, it was felt that the issues could be brought into focus more quickly and intelligently.

In setting time limits for various stages of the proceeding, it was felt that the proceeding could be expedited while still leaving ample time for the work to be completed. It was felt that the use of a trial examiner would also expedite the proceedings and relieve the unsalaried commissioners of some of the burden of conducting hearings. In authorizing the award of damages for lost wages in employment cases and a judicial award of other damages, it was felt that the statute should be remedial in nature as well as prohibitory. Finally, it was felt that judicial review should take place only under the Administrative Procedure Act, thus eliminating the anomaly of possibly having such review under the Administrative Procedure Act in a law court and in an enforcement proceeding in an equity court. Overall, the Committee's objective was to insure that discrimination is prohibited and that its effects are eliminated, while at the same time insuring that only those who have engaged in discrimination are penalized and that there is a fair process for making this determination.

Item 24-12 Open Meetings

The recommended bill adds provisions to Article 76A, concerning Public Information. In general terms, the proposed bill requires that a public body in exercising legislative, quasi-legislative or advisory functions must hold its meetings in public unless closed for one of twelve specific reasons or for "some other exceptional reason so compelling as to override the general public policy in favor of open meetings." A public body is an entity of two or more persons which is created by public authority and which exercises legislative, quasi-legislative, executive, judicial, quasi-judicial or advisory functions. An effected public body must give

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notice of its meetings which is "reasonably calculated to give notice to interested persons." Such public bodies must keep written minutes which are open to public inspection unless disclosure would be inconsistent with the closing of a meeting. Enforcement is through private law suits. In such a suit the court may void any final action, except an action appropriating public funds, providing for the issuance of bonds, or levying taxes, if it was taken at a meeting which was improperly closed or for which there was improper notice. The proposed bill prevails over inconsistent provisions in existing law unless they are more stringent.

Three Open Meetings bills, S.B. 145, H.B. 400, and H.B. 844 were jointly referred to the committee and to the House Constitutional and Administrative Law Committee and were, in return, referred to a joint subcommittee. In drafting legislation to require public bodies to hold open meetings, to give notice of their meetings, and to require minutes for their meetings, there are two basic but conflicting policy considerations. On the one hand is the public's right to know about public business. On the other hand is the obligation of public officials to efficiently, effectively and fairly conduct public business. This obligation may require confidentiality.

Under existing Maryland law, a public body is given broad discretion in striking the balance between the public's right to know public business and the body's obligation to function efficiently and effectively. Existing laws commonly provide that public bodies shall hold open meetings but that nothing shall prevent them from holding executive sessions so long as any final action is taken publicly. In a joint hearing before the committee, it was contended that the present law is inadequate for it gives public bodies too much discretion in deciding whether to close a meeting. While the subcommittee accepted this criticism, it rejected the opposite approach, typified by the Florida law, of requiring open meetings without qualification. This approach, it was felt, gave public bodies too little discretion.

The subcommittee was generally satisfied that the basic structure of S.B. 145 of requiring open meetings but permitting meetings to be closed for specific reasons properly limited the discretion of public bodies in closing meetings without imposing an inflexible rule. The subcommittee's most distinctive contribution to the bill was to define "public bodies" in terms of their various functions and to then provide for application of the bill when public bodies were exercising three of these functions, i.e., legislative, quasi-legislative and

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advisory functions. Although there was a good deal of debate over the issue, it was decided to exclude public bodies when exercising executive functions because it is frequently necessary to discharge such functions quickly and because single executives are not covered by the bill.

The subcommittee generally accepted the list of reasons for closing public meetings which was contained in amendments to S.B. 145 offered by the Senate Committee. The subcommittee rejected the inclusion of a provision to allow meetings to be closed for other "exceptional reasons" as creating a "loophole" for evading the general requirement for open meetings. Specific notice requirements were deleted in favor of a more flexible requirement in terms of "reasonable" notice. It was decided that the bill should be enforced by private lawsuits. After a good deal of debate, it was decided that the court should have the authority to void final actions taken in improperly closed meetings or meetings without proper notice. The argument that the voidability provision created too much uncertainty as to the finality of such acts was rejected on the grounds the voidability provision would act as an effective constraint on public bodies to comply with the requirements of the bill.

The recommended bill is essentially the bill favorably reported by the subcommittee. However, the Senate committee made three substantive changes. First, the term "quasi-legislative" was amended to cover contracts, rates, and the Public Service Commission. Second, it provided that a meeting may be closed for other, unspecified but exceptional reasons. It was felt that such a provision was needed because every legitimate reason for closing meetings could not be anticipated. Third, the voidability provision was amended to exclude actions appropriating funds, providing for the issuance of bonds, or the levying of taxes from its application. It was felt that the possibility of voiding such financial measures might have an adverse effect upon public finances.

In conclusion, it is the committee's view that the recommended bill offers the greatest assurance of securing the public's right to know public business while recognizing that in certain instances confidentiality is indispensable to the efficient, effective and fair conduct of government. The committee believes that the recommended bill strikes the proper balance between these two imperatives.

Unfavorable Reports:

Item 3-1 Consumer Product Warranty Act

The bill referred to the committee, S.B. 859, provided for State enactment of what is essentially the federal Consumer Product Warranty Act. The federal act permits the States to enact and enforce more stringent consumer product warranty protection. During the course of the committee's consideration of this matter, it was suggested that such State enforcement would be more beneficial to consumers because the State is prepared to handle more routine complaints while the federal government is not. The committee felt, however, that as the federal act took effect only last July that the State should defer taking any action until it can be seen how the federal act is working.

Item 3-4 Legal Rate of Interest

The bill referred to the committee, S.B. 609, proposed an amendment to Article III, Section 57 of the Constitution to authorize the General Assembly to set the legal rate of interest. Article III, Section 57 currently sets the legal rate of interest at 6 percent unless otherwise provided by the General Assembly. In the course of its consideration of this bill, no evidence was presented to the committee for changing the current provision. As the current provision does permit the General Assembly to set the legal rate in interest, it was felt that no change should be made.

Item 24-11 Public Records Disclosure

The bill referred to the committee, S.B. 1101, amended the Freedom of Information Act to provide that the public may be denied the right to inspect certain writings prepared or submitted in a proceeding, other than rule-making, before an administrative agency. In the course of the committee's consideration, it was suggested that this amendment would provide needed confidentiality for the investigatory stage of administrative proceedings. Thus, bare complaints could be kept confidential. On the other hand, it was argued that the public's interest in knowing about the investigatory stage of such proceedings, including the contents of complaints made to administrative agencies, outweighed any interest in protecting the privacy of complainants or the subjects of complaints.

Item 24-13 Special Police

The bill referred to the committee, S.B. 778, revised various provisions of Article 41 of the Code relating to Special Policemen. Principally the bill

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provided for three classes of commissions, original, renewal, and probationary, and specified the grounds for limiting, suspending or revoking commissions. Present law does not provide for classes of commissions and simply provides for termination without specifying any grounds. In the course of its consideration of this bill, the committee received a much more comprehensive proposal from Mr. Robert Noble of Silver Spring. This proposal was submitted to the Commission to Study the Operation of Security Guards and Special Police for its comments. The Commission opposed the proposal. The committee felt that no legislative action should be taken on this matter until the Commission makes its report.

Deferred:

Items 5-3 Interception of Communications; 6-4 Illegal Surveillance; and 6-6 Monitoring Telephone Communications

These items relate to the committee's investigation of the Baltimore City Police Department and have been deferred pending completion of that investigation.

Items 7-5 Higher Education Due Process; and 15-2 Public Employment Relations

These items have been referred to a subcommittee for further study.

Item 23-1 Parking Ticket Liability

This item was held to give the committee further time to consider this matter.