

**Assessment of Improvements in Transparency
Based on Recommendations of the
League of Women Voters of Calvert County Study “Transparency of County
Governance
(October 26, 2017)**

“Transparency of Governance in Calvert County, MD”, a study conducted by the League of Women Voters of Calvert County, was published and distributed in October 2014. It contained recommendations for changes which could be made by the Calvert County government to increase both transparency and opportunity for citizen participation.

Below is an assessment of the degree to which those recommendations have been implemented by the Calvert County Board of Commissioners (BoCC) and staff during the three years following the release of the study.

The League conducted the assessment by monitoring BoCC meetings and public hearings, examining the minutes and other documents of meetings, noting changes in policies announced by the BoCC or county staff or reported in the press. We also monitored the availability of information to citizens on the county website.

Below, we evaluate the degree to which the county implemented the League’s seven primary recommendations. The findings are rated on the following scale:

Implemented (the recommendation was adopted as formulated);

Progress (the recommendation was partially implemented) or

Not Implemented.

I. Official County Legal Notices in Newspapers. A small representation of the county seal should be attached to the title line of all its legal notices in newspapers.

Assessment: **Implemented**

Note: Newspaper readers previously had to look at every legal notice over several pages of the county newspapers dominated by estate notices and similar legal postings to find official Calvert County announcements. A county seal on the notice promptly captures the reader’s attention

II. County Website. The county should operate two websites. One would be primarily for residents and will contain only the official business of the county. A second website could be created solely for those seeking information on upcoming social and cultural events, for highlighting attractions and areas of interest in the county for both tourists and residents, and for promoting business and economic development.

Assessment: **Not implemented.** However, it appears, through reorganization and significant outreach tools on the website, county government leverages technology to increase and simplify access to government information. It offers a robust subscription service on its homepage. By clicking the “Notify Me” button people can select different email notifications from approximately 65 information streams provided by county offices, functions and commissions. We also think various age cohorts in the county might also benefit from a Text alert option instead of only an email option.

III. The BOCC Weekly Meeting and Public Hearings. The BoCC should consider holding most public hearings and some regular weekly meetings during evening hours (6:30-9 P.M.) to enable more citizens an opportunity to attend.

Assessment: **Not Implemented.**

Note: The County Administrator told us initially (as the new BoCC took office in 2015) there was interest in increasing the number of BoCC meetings, including having more evening meetings. However, as the term of this Board progressed, the agendas simplified and the Board felt the work of the Board was adequately dealt with within the regular Board schedule.

IV. The BoCC Agenda. Our report suggested the BOCC form its agenda and supply supporting documents on the website ten days before the weekly meeting. Public safety or other exigent items, which in our experience are rare, can be added up to the meeting time. Documents and presentations for public hearings should be placed on the county’s website the same day as the announcement first appears in the county newspapers of record.

Discussion: The county compiled the agenda through late Thursday and then posted by Thursday night.Friday before the weekly meeting the following Tuesday morning. The public needs more time to read, react and respond to agenda items, either by providing written messages to the BoCC beforehand or to arrange to attend the meeting. Many public hearings occur at these weekly meetings.

Assessment: **Not implemented.**

Note: Following the LWVCC transparency report, the county has made changes in the process for developing the BoCC agenda. The due date for departmental materials moved to 13 days before the scheduled meeting.

The current practice allows the County Administrator to form a tentative agenda for the Commissioners approval 9 days prior to the meeting.

In the view of LWVCC, since the “tentative” agenda already exists, it could be labeled “tentative” and published on the website prior to the “official” agenda. That would make it available to the public approximately 9 days prior to the scheduled BoCC meeting.

V. Preparation of the Budgets. Part A. Budget documents should be available to the public three weeks prior to the budget hearings. Part B. A public hearing is needed at the beginning of the budget building process, in the August-September timeframe.

Discussion: The public needs time to read and absorb the budget documents. Also, the county staff and commissioners need to know and hear about the public’s concerns for the upcoming budget and capital improvement plan before these plans are drafted, not just at the end of the process.

Assessment: Part A: Progress. While publishing the proposed budgets three weeks prior to the budget hearing has not been uniformly enacted, the Dept. of Budget and Finance has made improvements. Maryland Senate Bill 360 was enacted in 2015, requiring both the proposed Staff Budget and the proposed Commissioners’ Budget must be published on the website and available in libraries one week before the public hearings, increasing the required time the budget is available for public viewing by two or three days.

In fact, since 2015, the Dept. of Budget and Finance staff recommended budget (March) and the commissioner’s budget (May) have been posted online 10-12 days before their public hearing dates, versus 3 days.

Note: The budget document of 500 plus pages online has been broken into easily downloaded sections and website responsiveness is better.

Assessment: Part B: Implemented. The Department of Budget and Finance in 2015, 2016 and 2017 held a public “Budget Town Hall” in the August-September time frame to give citizens an opportunity to ask questions of the budget staff and other departmental heads and express preferences as to how county funds should be spent.

Furthermore, the “Budget Town Hall” in August or early September is now listed officially as an annual event on the “budget calendar”, along with the two public budget hearings.

Note: The County implemented in 2015 a review of each county department’s expenditures and made a report to the public outlining the departments’ services and functions (Service Based budget). If actively managed, this process provides greater transparency on how the county uses public funds.

VI. Executive Sessions. Reports of business conducted in closed sessions need to be more complete and informative.

Assessment: **Progress.** After the distribution of the transparency report and discussions with County Attorney, John Norris, sanitized minutes from the Executive Sessions are now posted on the website, located below the Minutes of the open Board of County Commissioners' meeting. We noted an effort by the county government to increase transparency over the practices from previous years.

Note: We are not attorney's, and therefore, do not analyze statues or statutory constructions. Instead, we relied on the advice in Office of the Maryland Attorney General's Open Meetings Act Manual (2017) and the advisory opinions of the Open Meetings Compliance Board when examining the executive session processes.

According to the Attorney General's guidance, the Open Meetings Act imposes four conditions on a public body's exercise of its discretion to close a meeting. First, the presiding officer must make a written statement including the *topics to be discussed*, the *reason for closing the meeting* (emphasis added) and the statutory exception as authority for closing the meeting. (There are about 14 possible exceptions.) In effect, the closing statement serves as the agenda for the closed meeting. Second, the presiding officer must conduct a recorded vote.

The third condition limits the topics and discussion in the closed session to the items disclosed in the closing statement. The fourth condition requires minutes of the meeting disclosing what was discussed, who attended the closed meeting and what actions the public body took. Comparing the Closing Statements and the minutes the public can figure out whether a public body complied with the disclosure requirements.

In our view, this is not onerous. If the public body doesn't know with some specificity the topics to be discussed and the reason for closing the meeting, it is not ready for an executive session.

Board of County Commissioner executive sessions routinely do not comply with this guidance on Closing Statements.ⁱ We reviewed executive session documentation on the county government's website from 2015 through May 2017 and concluded the Commissioners' Closing Statements routinely included the Statutory authority and then parroted the statutory language as both the reason for closing and the topics discussed. The following is an illustration of the county's routine practice from its January 31, 2017 Closing statement:

The Statutory Authority to Close the Session:

"Before a contract is awarded or bids are opened, to discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process."

The reasons for closing and the topics discussed:

"The Board will discuss, before a contract is awarded or bids are opened, a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public

discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.”

The “reasons and topics” section do not tell the public which of the elements and topics would be addressed, to wit: a negotiating strategy, contents of a bid, contents of a proposal, the nature of the topics within those elements nor why confidentiality was necessary. This kind of obfuscation impedes transparency. Likewise, it seems odd the contract or the specific service being contracted was not identified. How could that jeopardize confidentiality? The contract is probably already in the public domain if they are planning a negotiating strategy for it or considering bids or proposals submitted by the public.

The county’s routine practices resist the accountability the Closing Statement offers by not providing “topics to be discussed” and the “reason for closing” the meeting. In routine form, the county cited all possible elements in an exception authority, and did not limit the elements and their respective topics to only those items planned for discussion in the closed session.

When the county published the minutes, often weeks later, we sometimes found a cogent reference to the topic discussed in the meeting minutes of the executive session. However, without the topics fully described in the Closing Statements, there was no way to have confidence the topics are the same as intended in the Closing Statement. Practically speaking, if the topic can be described in the minutes following the meeting, the topic can be described in the Closing Statement. The only new thing the minutes should add are the persons present and the resolution of the matter.

Going back years, the advisory opinions of the Open Meetings Act Compliance Board have found routinely in violation “uninformative boilerplate/mere repetition of statutory authority” topics and reasons in the Closing Statements.

During our review, many items caused us to question the appropriateness of an executive session or other items such as the failure to record the full vote on the item approved in executive session. We provided our concerns to the County Administrator.

We continue to encourage the county to identify topics and reasons for excluding the public as fully as possible without compromising confidentiality. And we will continue to monitor the county’s progress.

VII. Status Reports on Large Projects. The BoCC and county staff need to give the public status reports on the progress of “large projects.” We define large as a project costing more than \$500,000. The Prince Frederick Middle School/Armory property, the second park in Dunkirk, and the expansion of the Cove Point LNG plant are examples.

Assessment: Progress. In 2015 the county initiated a “County Projects Update” tab on the county website home page (www.co.cal.md.us). This site is intended to provide information on projects of interest to the public. This innovation is welcome, and the access is smooth and fast. One click takes you to a list of projects. A second click gives you information on each topic. Topics at the time of this assessment include Armory Square and Dowell Rd. widening.

However, the topics are not updated. For example, current information on Armory Square could have included: expiration of Exclusive Negotiating Rights Agreement with Bargo, Inc.; passage of zoning amendments re: New Town District; the new entrance into the Armory Square project planned by the State Highway Administration, etc.

The Dowell Road Widening project has an undated project update on the county website, and therefore, does not inspire confidence.

Updates should be posted and dated regularly; we think once a quarter is reasonable. An example of how current information can be provided to the public on an ongoing basis is the way the construction of the Armory Road Circle was covered by “Current Projects Update”. The updates were frequent and relevant.

ⁱ A properly-completed written statement serves to prompt each member of the public body, before voting, to consider whether the reason is sufficient to depart from the Act’s norm of openness. It helps members of the public, who will be barred from the closed session, to understand that this exception to the principle of openness is well-grounded. It serves as an accountability tool, because it enables the public to compare the pre-meeting disclosures with the minutes summarizing the actual conduct of the meeting and thereby to assess whether the discussion stayed within the exceptions that the public body had claimed.

Office of the Maryland Attorney General, June 2017, Open Meeting Act Manual, Chapter 5: Conditions for Closing a Meeting,
<http://www.marylandattorneygeneral.gov/OpenGov%20Documents/omaChapter5.pdf>, Accessed:
October 17, 2017