HB 444 Workgroup (2022)
DRAFT Summary of Best Practices Recommendations
RE: all-virtual meetings pursuant to subsection C of § 2.2-3708.3

Direction to convene a workgroup (2nd enactment clause of HB 444 (Bennett Parker, 2022):

> That the Virginia Freedom of Information Advisory Council shall convene a work group, no later than May 1, 2022, to develop recommendations for best practices for public bodies holding all-virtual public meetings, including but not limited to how to take public comment virtually and the proper use of video by public body members. Such recommendations must be completed by August 1, 2022. The work group shall include representatives of the Virginia Association of Counties, the Virginia Municipal League, the Virginia Coalition for Open Government, and the Virginia Press Association and such other stakeholders the Council deem appropriate.

NOTE: Once the workgroup has completed its work on best practices recommendations, the recommendations will be incorporated into a revised Electronic Meetings Guide for 2022 that reflects the amendments made by HB 444. This draft summary is intended as a working document to reflect the consensus of the workgroup participants.

Interested parties met on May 6, 2022 and discussed the first topic directed to the workgroup re: "how to take public comment virtually." The workgroup met again On May 24, 2022, to discuss the second topic, "the proper use of video by public body members." The workgroup will meet a third time if needed as other topics arise. The participants included representatives of the Virginia Association of Counties, the Virginia Municipal League, the Virginia Coalition for Open Government, the Virginia Press Association, the Virginia School Boards Association, the Department of Professional and Occupational Regulation, the Department of Health Professions, the Department of Education, the Department for Aging and Rehabilitative Services, and the Department of Criminal Justice Services.

I. Recommendations on Public Comment

A. Statutory Provisions

- For all meetings conducted under FOIA, subdivision F of § 2.2-3707 provides as follows: "The proposed agendas for meetings of state public bodies where at least one member has been appointed by the Governor shall state whether or not public comment will be received at the meeting and, if so, the approximate point during the meeting when public comment will be received."
- For all electronic meetings conducted under § 2.2-3708.3, subsection A provides as follows: "Public bodies are encouraged to (i) provide public access, both in person and through electronic communication means, to public meetings and (ii) provide avenues for public comment at public meetings when public comment is customarily received, which

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may include public comments made in person or by electronic communication means or other methods."

- Among other requirements for conducting all-virtual meetings under subsection C of § 2.2-3708.3, subdivision C 6 provides the following requirement: "The public is afforded the opportunity to comment through electronic means, including by way of written comments, at those public meetings when public comment is customarily received;"
- Other laws may also have requirements for public comment that are specific to the type of public body and the type of meeting. For example, there are requirements to take public comment at certain meetings for local governing bodies in subdivision D of § 15.2-1416, for school boards under § 22.1-79, for governing boards of public institutions of higher education in § 23.1-307, etc.

B. Best Practices Recommendations

Before the meeting:
- Notice: State in the meeting notice whether public comment will be taken during the meeting and/or by other means such as submitting electronic written comments in advance.
- It is recommended that all public bodies accept written comments by email or other means. Public bodies should consider posting the comments to the public body's website, if it has one, and providing the comments to the members in advance of the meeting. You may want to set a deadline for receiving comments in advance in order to ensure there will be time for members to review them and to post them (but still allow comments to be submitted after the deadline, just note that they may not be posted before the meeting if they are received late).
- Public bodies may ask people to register in advance for logistical and planning purposes, but do not require registration in advance as a condition in order to speak because many commenters may not decide whether to comment until the meeting occurs.

During the meeting:
- Have the body's chair, clerk, or chief administrator announce when and how public comment will be taken, including any time limits, whether speakers will be heard in any particular order, asking participants to mute their microphones when not speaking, etc.
- Ask the person making comments to give their name (including spelling) and whether the person represents an organization so everyone knows who is speaking (but it is not required by law).
- Time limits: it is recommended that each speaker be allowed an equal amount of time to speak and that the amount of time provided is reasonable under the circumstances and sufficient to allow meaningful comment. However, because the circumstances and logistics of each meeting may vary as to the number of speakers, total time available for public comment, etc., there is no specific length of time that would be appropriate for all situations.
- Written comments: Depending on the number and length of written comments received, you may want to either read the comments (if they are few and/or brief) or summarize them (if they are many and/or lengthy) as appropriate to the circumstances. Written comments may be incorporated by reference, just make sure to keep copies if you do so.

Technical considerations:
- Waiting rooms: based on prior experience the workgroup recommends against using virtual waiting rooms where commenters must be pulled from one virtual "room" into another in order to speak because of the logistical difficulties and interruption to the flow of the meeting.
- If possible, have a separate staff person who is not directly participating in the meeting handling technical duties such as recording the meeting, muting participants with open microphones who are not currently presenting or commenting, allowing and disabling screen sharing, etc.
- Screen sharing: only staff and presenters should be allowed to share their screens in order to avoid the risk of someone else displaying inappropriate content.
- Chat functions: it is recommended not to use public written chat features for all-virtual meetings if the virtual meeting software will not capture it for recording and minutes purposes and also for the same reasons that screen sharing should be limited.

II. Recommendations on the Use of Video by Members

A. Statutory Provision:
- Subdivision C 6 of § 2.2-3708.3 requires that "[t]he electronic communication means used allows the public to hear all members of the public body participating in the all-virtual public meeting and, when audio-visual technology is available, to see the members of the public body as well."

B. Best Practices:
Please note that in the course of discussing these recommendations for best practices, the workgroup concluded that most of them were applicable to all types of electronic participation in public meetings, although the details may vary depending on the type of meeting, the type of electronic participation, and the resources available to the public body. For example, a meeting held under the state of emergency provisions in § 2.2-3708.2 to address an acute weather emergency that requires immediate action may not allow time for many of the suggested actions, especially those that would take place before a meeting. The workgroup also recognized that staffing and technological resources vary significantly between different public bodies, which can affect each public body's ability to implement these recommendations. For those reasons, please keep in mind that other than subdivision C 3 of § 2.2-3708.3 quoted above, these recommendations for best practices are not statutory requirements.

Before the Meeting:
- Consider checking with new members to ensure they are familiar with the virtual meeting technology being used by the public body, and if not, help them become familiar with its basic functions (how to log in, turn microphone and camera on and off, etc.).
- Consider providing members who are not already familiar with participation in virtual meetings any additional tips for being on camera generally (be on time, dress and act appropriately, lighting and glare issues, whether and how to use a virtual background, etc.).

- Consider having members who have not participated electronically in previous meetings log in before the meeting starts to ensure that they do not have any connection problems or other technical issues. Leave enough time so that staff can help if there are any such problems. If there are no such issues, have the members log back out or turn off their cameras and mute their microphones until it is time to start the meeting.
- Before or at the start of a virtual meeting, remind the members that the FOIA provisions that apply to participation in all meetings also still apply to electronic participation in all-virtual meetings. For example, whether a meeting is held in person or all-virtually, members should avoid the use of electronic communications in ways that would create a "meeting within a meeting" that is not visible to the public. This is especially true in all-virtual meetings because the members are already communicating electronically and may have other means to do so that are not apparent to the public such as text chat functions that may be limited to certain participants and are not visible to those watching the meeting.
- Similarly to accepting public comments as described above, consider posting presentation materials to the public body's website, if any, and distributing them to the members in advance of the meeting (if the materials are available in advance).
- Consider the needs of persons with disabilities and compliance with the federal Americans with Disabilities Act (42 U.S. Code § 12101 et seq.; for more information, please see www.ada.gov).

During the Meeting:
- Generally, using an audio/visual connection is preferred over an audio-only connection for all types of electronic participation. This is especially true for all-virtual meetings because there is no central meeting location where the public can be in the same place as the members to observe the meeting.
- When using an audio/visual connection, members should stay on video during the meeting unless there is a specific reason to turn the video off, but remember to mute their microphones when they are not speaking. This is especially true for all-virtual meetings in order to try to provide transparency similar to an in-person meeting for those watching, while simultaneously avoiding audio problems such as feedback, echoes, and inadvertent noises from open microphones.
- Consider taking steps to ensure that the public and other members are aware of which members are speaking or acting at any given time, especially if a member is using an audio-only connection. For example, any members who are not on video should state their names before speaking so there is no confusion regarding who is talking. For members who are on video, if the technology allows it, display members' names along with the video. The same suggestions also apply to any other speakers or presenters who are not members.