

Electronic Meetings Subcommittee of the FOIA Council
Meeting Summary
August 5, 2008
Richmond, Virginia

The Electronic Meetings Subcommittee held its second meeting on August 5, 2008¹ to continue its examination of the changes made by the 2008 Session of the General Assembly that would allow members of the State Air Pollution Control Board (Air Board) and the State Water Control Water Board (Water Board) to meet via teleconference under certain circumstances (HB 1332 (Landes)/SB 423 (Puckett)). While this issue was not the central thrust of HB 1332/SB423, these specific provisions conflicted with the FOIA provisions for teleconferences and electronic meetings. Delegate Landes and Senator Puckett were invited to attend today's meeting, but neither was able to do so.

The meeting opened with a brief presentation by staff contrasting the electronic meetings requirements set forth in the Virginia Freedom of Information Act (FOIA) with the changes made by HB 1332/SB 423. Generally, electronic meetings held under § 2.2-3708 require that all locations from which members participate must be open to the public. By contrast, provisions in HB 1332/SB 423 provide that either Board, when holding an electronic meeting, "shall have at least one forum open to the public and individual Board members may participate from any location regardless of whether it is open to the public."² FOIA also requires that "a quorum of the public body is physically assembled at one primary or central meeting location" in order to hold an electronic meeting. In contrast to this FOIA requirement, provisions of HB 1332/SB 423 would allow public hearings to be held by "less than a quorum of [each] Board," which may be interpreted to imply that these Boards may hold electronic meetings without first physically assembling a quorum.³

In addition, staff presented a draft that reflected the consensus of the subcommittee reached at its previous meeting concerning the conduct of public hearings by members of the State Air Pollution Control Board (Air Board) and the State Water Control Water Board (Water Board). Staff advised that the draft language was essentially clarifying. In addition, staff advised that the main issue of controversy was not addressed in the draft and that, as previously requested, staff, representatives of the Virginia Press Association and DEQ

¹ Senator Houck and Mssrs. Axselle, Miller, Fifer, Landon and Selph were present. Due to a temporary medical condition that prevented him from physically attending today's meeting, Mr. Fifer participated from Alexandria, Virginia via telephone as allowed pursuant to subdivision A 2 of § 2.2-3708.1. Mssrs. Landon and Selph were appointed at the FOIA Council meeting on August 5, 2008 to serve on this subcommittee.

² Subsection D of § 10.1-1322.01, regarding the State Air Pollution Control Board, and subsection D of 62.1-44.15:02, regarding the State Water Control Board (both "subsection D" hereinafter). Both use identical language, which reads in full as follows: *Either the Director or a majority of the Board members, acting independently, may request a meeting of the Board to be convened within 20 days of the Director's decision pursuant to subsection C in order to review such decision and determine by a majority vote of the Board whether or not to grant a public hearing or Board consideration, or to delegate the permit to the Director for his decision. For purposes of this subsection, if a Board meeting is held via electronic communication, the Board shall have at least one forum open to the public and individual Board members may participate from any location regardless of whether it is open to the public.*

³ Subsections J, M, and O of § 10.1-1322.01 (regarding the State Air Pollution Control Board) and subsections J, M, and O of 62.1-44.15:02 (regarding the State Water Control Board).

would meet before the next Subcommittee meeting to attempt to resolve the conflict between HB 1332/SB423 and FOIA as it related to the presence of a quorum and public accessibility to remote meeting locations. DEQ agreed that individual board members could meet at a public venue, such a community college that has audio/visual capabilities to participate in teleconferences. However, the Subcommittee noted that the quorum issue was still on the table for future deliberation.

The next meeting of the Subcommittee will be held in Speaker's Conference Room of the General Assembly Building on Monday, August 25, 2008 at 1:00 PM.