

Virginia Freedom of Information Advisory Council
Electronic Meetings Subcommittee
October 17, 2012
10:00 AM
General Assembly Building
Richmond, Virginia
Meeting Summary

The Electronic Meetings Subcommittee (the Subcommittee) held its fourth meeting on Wednesday, October 17, 2012 to consider legislation referred to the FOIA Council for study by the 2012 Session of the General Assembly.¹ The Electronic Meetings Subcommittee continued its study of the issues raised by HB 1105 (Greason) and HB 1149 (Dudenhefer).

After the meeting was called to order and the members and interested parties introduced themselves, staff provided an overview of the work of the Subcommittee to date. Lisa Wallmeyer, staff to the Joint Commission on Technology and Science (JCOTS), briefed the Subcommittee on the work of JCOTS subcommittee also studying electronic communication meetings. It was reported that the JCOTS subcommittee would likely not recommend any legislative changes but would continue to explore and evaluate the full spectrum of electronic communication meeting possibilities from an available and emerging technology perspective. Currently, the available technology affords meetings utilizing virtual telepresence products, personal computers and tablets as well as the more traditional option of telephone conferencing. Ms. Wallmeyer indicated that the JCOTS subcommittee will also consider the quality of electronic communication meetings, including possible requirements for band widths and minimum resolution.

The Subcommittee next discussed whether there might be consensus, based on testimony at previous meetings, to consider relaxing the current physical quorum requirement found in § 2.2-3708 for certain state public bodies and subcommittees of state public bodies. Finding consensus to move forward, the Subcommittee called for public comment. Jeff Palmore, Office of the Governor, suggested that purely advisory state public bodies and subcommittees of state public bodies should be able to meet by electronic communication means without a physical quorum; but that all other requirements of § 2.2-3708 be met. Sandi McNinch, Virginia Economic Development Partnership, agreed that this proposal would be enormously helpful. Mark Courtney, Department of Professional and Occupational Regulation also favored the proposal and stated that while there was no need for it historically, it gives the regulatory boards within the Department a tool. Megan Rhyne, Virginia Coalition for Open Government, told the Subcommittee that her difficulty with the proposal was her concern that the work of the main body would be shifted to its subcommittees. She cited the FOIA Council as the perfect example because the bulk of the work and public input is done at the subcommittee level.

Subcommittee Discussion

¹ Subcommittee Members Kathleen Dooley, Stephanie Hamlett, George Whitehurst and John Selph were present.

The Subcommittee questioned whether there should be any limitations on the number of meetings that state advisory bodies and subcommittees of state public bodies could hold. Mr. Whitehurst stated that he was not ready to give up the physical quorum requirement completely. It was noted that under HB 1149 (Greason) the number of meetings held without a physical quorum was limited to 50 percent. The Subcommittee agreed that this limitation was problematic in that it would be difficult to ascertain when the 50 percent threshold was reached. It was suggested that in lieu of limiting the number of meetings without a physical quorum, perhaps there should be a limitation on how many times a member of an eligible state public body may participate. Mr. Selph noted that at the beginning of the Subcommittee's work no case was made to change the current law. However, Mr. Selph acknowledged that the technology is in place; but he was still struggling to find the right balance to ensure the quality of public access. Ultimately, Mr. Selph said he could support allowing subcommittees of state public bodies and state advisory public bodies to meet this way, but was not ready to give up the requirement for a physical quorum. Ms. Hamlett reminded the Subcommittee that public institutions of higher education have executive committees who can take action without the involvement of the entire board of visitors. She questioned whether they and like subgroups should be included in the proposal. Ms. Hamlett stated that it is important to focus on the powers of the subcommittee--whether they can take final action or are purely advisory. Ms. Hamlett stated that she believed subcommittees that have authority to take final action should not be included and, instead, only subcommittees that function in a purely advisory capacity to the full state public body should be eligible to meet without a physical quorum. Mr. Selph proposed that if the state public body holding the meeting was required to utilize a combined audio and visual method, then advisory state public bodies and advisory subcommittees of state public bodies could meet without a physical quorum. If only audio (i.e. a teleconference) is used, then the law should remain the same. The Subcommittee discussed limiting the number of times an eligible state public body could meet without a physical quorum but ultimately decided that it would be difficult to implement. Mary Yancey Spencer, Virginia State Bar (VSB), told the Subcommittee that the need for a physical quorum hurt participation on VSB committees because members from smaller firms could not afford the time away from their practices to travel to VSB committee meetings. Ginger Stanley, Virginia Press Association, stated that she is sympathetic to the Subcommittee's plight as it is such a difficult issue because subgroups have varying authority and generally advisory bodies are where the public interest lies. Ms. Stanley restated VPA's support of a change to the law in the event that virtual telepresence becomes widely available.

Based on the testimony and Subcommittee discussion, the Subcommittee agreed on the following elements to be included in a staff-prepared consensus draft, namely, no physical quorum required (i) if the meeting was held using a combined audio and video method, (ii) if eligibility was limited to state advisory public bodies² and subcommittees that are created

² § 2.2-2100 provides that "...[A] board, commission or council shall be classified as advisory when its purpose is to provide advice and comment to an executive branch agency or office. An advisory board, commission or council serves as a formal liaison between the agency or office and the public to ensure that the agency or office understands public concerns and that the

only to advise a state public body, and (iii) where all other requirements of § 2.2-3708 were met. Otherwise, the requirements of § 2.2-3708 would remain the same.

Ms. Dooley then asked the Subcommittee if there might be consensus for relaxing the requirements of § 2.2-3708 for local or regional public bodies. After discussion of the arguments for and against, the Subcommittee was unable to reach a consensus. There was consensus, however, that they were open to continue the discussion at future meetings. Ms. Hamlett suggested that it was prudent to let JCOTS finish its work to evaluate the technology before the Subcommittee made any recommendation concerning local public bodies.

The Subcommittee did take public comment on the expansion of electronic communication meetings to local and regional public bodies. Mark Flynn, Virginia Municipal League (VML), told the Subcommittee that with planning commission and boards of zoning appeals members need to be present in person to review large number of documents. Mr. Flynn noted however, that VML wants flexibility for members who live in one jurisdiction but work in another. Phyllis Errico, Virginia Association of Counties (VACO) advised the Subcommittee that VACO wants the flexibility for purely advisory local bodies like the bike committee or the beautification of the park committee. Ms. Errico also noted that more and more responsibilities are being pushed down to the local level and local public bodies are asked to do more with less. She stated that flexibility helps all citizens. It was suggested that § 2.2-3708.1, which allows exception for individual members of any public body to participate remotely in a meeting under certain circumstances, be amended to allow individual members to miss a meeting due to a personal matter--which can be a business or vacation conflict. It was noted that the current exception for emergencies is too limiting. Patrick Cushing, on behalf of Stafford County, stated that he prefers opening electronic communication meetings to local public bodies, but agrees with an exception for individual members for personal matters. Megan Rhyne, VCOG, told the Subcommittee that she understands the concept of a personal matters exception, but she is concerned that if enacted, individual members would put less importance on their public service commitments. She stated that it is OK to miss a meeting every once in a while because of scheduling conflicts. Ginger Stanley, VPA, recommended that the Subcommittee keep to the first idea--relaxing rules for certain state public bodies--and perhaps make it a pilot program because the experience will show how well it is working in terms of quality public access.

The Subcommittee requested staff to prepare a draft to facilitate future discussions on a personal matter exception for individual members of a public body based on Subcommittee discussions. The Subcommittee gave staff authority to include in the consensus draft for state advisory bodies and advisory subcommittees of state public bodies improved reporting requirements to the FOIA Council and JCOTS to enable both bodies to ascertain the quality of these public meetings in terms of public access and effectiveness of the meeting itself.

activities of the agency or office are communicated to the public. An advisory board, commission or council does not serve a regulatory or rule-making purpose. It may participate in the development of public policy by providing comment and advice."

Drafts discussed at this meeting will be available as soon as possible on the FOIA Council website.

The next meeting of the Subcommittee is scheduled for Wednesday, November 7, 2012 at 10:00 a.m. in the 4th Floor West Conference Room of the General Assembly Building. There being no further business, the meeting was adjourned.

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