

# E-MEETINGS

## Virginia Coalition for Open Government

### Our principles

- ★ We remain committed to the FOIA Council's policy that, "Representative government is best served when public officials meet face-to-face in regularly scheduled public meetings," and that as technology advances, "the FOIA Council will continue to balance the preference for face-to-face meetings against the emerging technology in light of the clear policy statement of FOIA to afford citizens every opportunity to witness the operation of government."
- ★ There should not be further expansion of rules to make it easier for public body members – individually or as a whole – to participate electronically without first expanding the right of the public to **observe** and **participate** electronically.
- ★ As the watchdog for the public that cannot attend, the press must retain the ability to access members of a public body for clarification, comments and reactions.

### E-meetings & the pandemic

We used to think of "e-meetings" in terms of conference calls and call-ins from remote locations, but when the pandemic hit and limitations on group gatherings were imposed, public bodies at the local, regional and state level embraced video meetings through platforms like Zoom, Microsoft Teams and WebEx.

Important government work was thus allowed to continue, and public body members were protected.

Public bodies also leveraged technology during this time to **benefit the public** in two ways.

- by live-streaming meetings on platforms like Facebook, YouTube and local cable access channels; and
- by taking public comments through the meeting platform, or by allowing call-in comments and emailed, written comments.

E-meetings during the pandemic did not come without cost: public body members and citizens alike noted the diminished quality of the deliberative process and compromised interactions among members and the public.

Still, understanding that future emergencies may again disrupt the established rules for in-person meetings, the 2021 General Assembly adopted SB1271 to guide public bodies, while preserving the public's ability to observe and participate electronically.

**open government**

## Existing law

“Nothing in [the rules for electronic meetings] shall be construed to prohibit the use of interactive audio or video means to expand public participation.”

§ FOIA: 2.2-3708.2(E)

## SB 1271

SB 1271 expanded the rules that allow for public bodies as a whole to meet during an emergency when it is impracticable or unsafe to assemble in person. The bill also added guardrails to ensure public access.

## HB 1931

Based on a bill introduced pre-pandemic, HB 1931 expands the number of times and types of situations an individual public body member can participate in a meeting from a remote location.

# Returning to “normal”

When emergency measures are lifted, public bodies will transition back to in-person meetings. When they do, owing to the passage in 2021 of HB 1931, individual members of public bodies will have more flexibility for participating remotely, by phone or by video.

And now, using the pandemic as a template, many elected and appointed members of public bodies are now seeking study and eventual legislation to further relax FOIA’s rules to allow public bodies even more options for e-meetings held in “normal,” non-emergency times.

This effort is not, however, accompanied by any related calls to expand or codify the public’s right to observe and participate electronically.

There should not be any further expansion of e-meeting rules for public bodies as a whole, or for individual members, without first expanding the rights of the public to observe and participate electronically.

## In response

Several arguments have been raised in support of expanding e-meeting rules for public bodies and their members. These will be addressed on the following page.

1. Allowing for more electronic meetings will allow for people with experience but with difficult home and life situations to serve on public bodies.
2. Allowing for more electronic meetings will benefit the public.
3. A majority of other states allow for electronic meetings in non-emergency times with no limits.


 The logo for Open Government, featuring the words "open government" in a stylized, lowercase font. The letters are filled with a pattern of horizontal lines in shades of orange, yellow, and red, giving it a textured, digital appearance.

*Allowing for more electronic meetings will allow for people with experience but with difficult home and life situations to serve on public bodies.*

- FOIA is a law of procedure: how to obtain records and how to conduct a public meeting. It is not a law to facilitate any particular person or voice onto a public body governed by its rules.
- Even if FOIA had an interest in expanding the pool of potential elected or appointed members, there is no evidence to support a cause and effect between the rules on electronic meetings and the shutting out of certain voices.
- In the past, we were told the electronic meeting rules needed to be relaxed because quality candidates with long comments in and out of Washington, D.C., were being kept from service. Again, there was no evidence of any link between the two.
- There is no evidence the membership of public bodies is any more diverse in states with more expansive electronic meetings rules than they are in Virginia.
- Questions related to how to attract individuals to public service are best left to the judgment of the public bodies themselves and/or the individuals considering service.

*Allowing for more electronic meetings will benefit the public.*

- One facet of this argument is that the pool of people who might serve on a public body is widened. See above: there is no correlation between the two, and FOIA is disinterested in the personal background of any elected or appointed official.
- Another facet of this argument is that it will expand citizen participation. Current law already allows public bodies to use technology to expand the public's ability to observe and participate, and during the pandemic, we saw many of them do so.

*A majority of other states allow for electronic meetings in non-emergency times with no limits.*

- Some states that are characterized as allowing for unfettered electronic meetings actually do have limits\*, including:
  - use of video-conferencing only (not teleconferencing) (Kentucky);
  - requirements on physical quorum and/or public access to the remote locations (Idaho, Mississippi, Montana, Nevada, Pennsylvania, Tennessee, Texas);
  - requirements that email exchanges among members are also considered electronic meetings that must be open to the public (Washington);
  - requirements for a public comment period (South Dakota); or
  - only in circumstances when in-person is impossible or impractical (Iowa).

\* Source: Reporters Committee for Freedom of the Press' Open Government Guide., [www.rcfp.org/ogg](http://www.rcfp.org/ogg)