



Virginia Freedom of Information Advisory Council

HB 1880 Subcommittee

September 5, 2023, at 1:00 p.m.

Subcommittee Room #1, Pocahontas Building

foiacouncil.dls.virginia.gov

The HB 1880 Subcommittee (the Subcommittee) of the Virginia Freedom of Information Advisory Council (the Council) met with Delegate Mike A. Cherry, chair, presiding.¹ The meeting began with introductions and opening remarks followed by discussion. A quorum was not present, so the Subcommittee took no action but did hear public comments and discussed the issue presented. Meeting materials meeting, as well as all written public comments, are accessible through the [Council's 2023 Subcommittees webpage](#).

Public Comments

The Subcommittee heard comments from the public before discussing [HB 1880](#) (Bennett-Parker, 2023), requiring localities to retain a public record of certain legal settlements and judgments and for the record of such amount to be subject to disclosure if requested pursuant to the Virginia Freedom of Information Act (FOIA).

- Megan Rhyne, Executive Director of the Virginia Coalition for Open Government (VCOG), explained that Delegate Elizabeth B. Bennett-Parker brought HB 1880 at VCOG's request because of a 2019 case in Franklin County involving a settlement the County reached with a former employee. The County stated that it had no record of the settlement amount and, therefore, did not have any records to provide in response to a FOIA request. Ms. Rhyne pointed out that a 1990 Supreme Court of Virginia ruling found that accounting records related to case settlements must be disclosed and that a 2013 FOIA opinion also advised that settlement amounts should be public record. She also stated that the only change in recent years in how localities are notified of such settlements is that they once were given printed copies of the settlement records, and, therefore, had such records in their possession and were responsible to provide copies of such records under FOIA, but currently are given electronic access to such records instead. In response to questions from the Subcommittee members, Ms. Rhyne stated that she did not have a problem with the language in HB 1880 but that during the 2023 Regular Session, the Chair of the House Committee on Counties, Cities and Towns had several questions regarding the language of the bill.
- Aimee Perron Seibert, representing the Virginia Press Association, concurred with Ms. Rhyne in her support of the bill and agreed that settlement amounts should be public record. She also noted the issue of localities being intentional in creating such records because there are no electronic technologies or portals that automate them. Ms. Perron Seibert supported the position that the Code of Virginia should be amended so that

¹ **Members Present:** Delegate Mike A. Cherry (chair), Senator Mamie E. Locke

Members Absent: Delegate Michael P. Mullin, Lola Rodriguez Perkins, Cullen Seltzer

settlement terms remain confidential while the settlement amount is made available to the public.

Discussion

The Subcommittee members discussed how to proceed on HB 1880 and observed that in order to make the changes recommended by Ms. Rhyne, Ms. Perron Seibert, and others, there would need to be a change in legislation to ensure that public fund settlements are disclosed because there is no requirement under current law for public bodies to have copies of these records when their insurance providers handle the settlements, and the insurance providers themselves are not "public bodies" subject to FOIA.

Senator Mamie E. Locke inquired about the potential issue of private insurance settlements. Ms. Rhyne volunteered that VCOG is not interested in private funds; however, if an insurance company is acting on behalf of a locality, such private funds should be disclosed. Because a quorum was not present, the Subcommittee could not make recommendations regarding HB 1880 to the Council.

Next Meeting

Delegate Cherry directed staff to poll members of the Subcommittee about future meeting dates.

For more information, see the [Council's website](#) or contact the Division of Legislative Services staff:

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