

June 7, 2007  
Meeting Summary  
Electronic Meetings Subcommittee

The Electronic Meetings Subcommittee held its second meeting on June 7, 2007.<sup>1</sup> The Subcommittee reviewed the three bills<sup>2</sup> referred to it. The Subcommittee first asked for public comment on HB 2293 (McClellan), which allows a local governing body to meet by electronic communication means only when gathering information and no action will be taken at the meeting. Frosty Landon of the Virginia Coalition for Open Government noted that what may be included in the term "no action" was unclear. Craig Merritt, presenting the Virginia Press Association (VPA), reiterated VPA's objections made at the Subcommittee's May 10, 2007 meeting. VPA indicated that it opposed all three bills during session and stated that its opposition to HB 2293 was based what it considered the flawed premise of the bill. VPA noted that equating government access based on a business model is fundamentally flawed and an inappropriate model for government. VPA stated that a business model for government was neither the highest or best way for government to operate because of the need for public trust and transparency. In addition, limiting authority for conducting electronic meetings to state public bodies is appropriate because of geographic diversity of the membership of state bodies. Phyllis Errico of the Virginia Association of Counties noted that with complicated issues, a work session is usually scheduled to brief the membership of a local governing body and no action is taken or prearranged to be taken. She indicated that this method yields better informed members and thus better decision making. Council member Craig Fifer stated that as with other FOIA issues, it is a question of balance. In this context, the balance is the public's right to witness the operation of government against the convenience of locally elected officials. He opined that protection of the public's right of access is paramount. He reminded that Subcommittee that last year the Subcommittee had made this decision and he saw no reason for departure now. Council member Roger Wiley explained that adoption of a budget is a good example of a no action agenda. At such meetings, there is no discussion among members of the governing body, only the executive of the locality doing the talking and showing charts and other visual aids relative to the budget. He noted that there is technology, "Skype" for example, which is available, free of charge to allow a virtual meeting. He noted that he used it to talk with his daughter when she was overseas. He also mentioned that other than governing bodies, the rest of local public bodies are not paid and do not get their expenses reimbursed. He argued that essentially what is being said is that it is better for a meeting to proceed without a member(s) than having an electronic

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<sup>1</sup> Msrs. Edwards, Wiley, Miller, and Fifer were present; Senator Houck and Mr. Axselle were absent.

<sup>2</sup> **HB 2293 (McClellan)**--Allows a local governing body to meet by electronic communication means only when gathering information and no action will be taken at the meeting.

**HB 2553 (Ebbin)**--Allows a local governing body to meet by electronic communication means when a local state of emergency has been declared; and

**SB 1271 (Whipple)**--Eliminates the requirement that a quorum of a state public body be physically assembled in one primary location in order for the public body to conduct a meeting through electronic communications means. Instead of the quorum, the bill provides that at least two members of the public body be physically assembled at one location.

meeting with all members present and participating. Subcommittee chair, John Edwards stated that he believes face-to-face meetings are better because of the presence of visual cues and the interplay of group dynamics. Face-to-face meetings are the highest and best use of the public's money. He noted that a better approach has already been established by the Council and enacted into law (July 1, 2007) that provides limited exemptions for *individual* members. Mr. Fifer indicated that he has not heard the argument that government is not able to recruit good people for public service because of any convenience issue. Mr. Wiley responded that he could make that argument. Mr. Wiley argued that the issue is not an open government issue; but about a notion of how a meeting is to operate. He stated that nothing is being concealed from the public. He also noted that preserving the dynamics of a meeting is not expressed in the policy of FOIA. Mr. Landon responded that that may be the case; however it is inherent in the quality of a meeting and the best use of public money. Mr. Merritt stated that the 2007 changes, yet to be effective, may address the practical issues and that evolving technology should be used to enhance access by the public. Mr. Miller averred that discussions so far by the Subcommittee are identical to those had over the last several years and he believes that no compelling reasons have been shown to change the policy of FOIA. A motion, properly seconded, was made to recommend against HB 2293. The motion carried by a vote of 4 to 0.

The Subcommittee next took up HB 2553 (Ebbin). VPA stated that by allowing local public bodies to have electronic meetings in the event of a local emergency is too open ended. For example, a water shortage is a local emergency, but clearly not one that would justify meeting electronically. A representative of Arlington County indicated that Arlington County preferred a bill limited to catastrophic emergencies, such as contagion, terrorism, or natural disasters. Mr. Wiley agreed and indicated that the exemption should be limited to Governor-declared emergencies and not locally-declared emergencies. Mr. Wiley stated that the universal concern among localities is that the public know that the government is still functioning. He cited Hurricane Katrina as an example of a catastrophic emergency and the need to reassure the public that the government is not shut down. Mr. Wiley noted that the Governor has the authority to include suspension of procedural laws in the event of a declaration of a state of emergency. The Subcommittee discussed the Governor's authority under § 44-146.17 and agreed that a bill with the limitations discussed above would be preferable to having the Governor designate which laws would be suspended. The Subcommittee directed staff to draft a bill that reflected the above discussion. The Subcommittee also decided that the minutes of any such meeting should reflect the nature of the emergency and the fact that the meeting was held by electronic communication means.

Finally with regard to SB 1271 (Whipple), VPA renewed its objections to the bill stating that there has been significant erosion of electronic meeting rules over the years, with the latest assault being on the physical assemblage of a quorum at one location. VPA opined that there is a value in face-to-face meetings not only for the public but for the members of the public body as well. All three bills represent the crossing of significant thresholds and the elimination of core concepts that have long

stood in the law. As a result, VPA urged the Subcommittee to move cautiously and seriously consider the long term effect on public accessibility to open meetings. The Subcommittee inquired how many state public bodies exist in Virginia. Staff indicated that while not having an exact number, there are literally hundreds of public bodies at the state level. Mr. Wiley mentioned that in light of environmental issues with green house gases caused by car emissions, SB 1271 was significant and he urged the Subcommittee to think about electronic meetings in this context as well. Mr. Fifer stated that there has been extensive discussion of the physical quorum issue and noted that nothing has changed. He agreed that the environmental issue was a new perspective that is compelling, but indicated that the priority of the Subcommittee should be open government. Mr. Edwards acknowledged that someday virtual meetings through electronic means are going to happen as technology develops. He noted, however, that technology is not there yet. To demonstrate his point, he pointed to the speaker on the table used for teleconferences. The Subcommittee agreed by a vote of 4-0 to table further discussion of SB 1271 unless Senator Whipple requests further consideration by the Subcommittee.

The next meeting of the Subcommittee is scheduled for Thursday, July 12 at noon in the Speaker's Conference Room of General Assembly Building in Richmond.