

Electronic Meetings Subcommittee of the FOIA Council
August 25, 2008 Meeting Summary
Richmond, Virginia

The Electronic Meetings Subcommittee (the Subcommittee) held its fourth meeting¹ to continue its deliberations on statutory changes made in 2008 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 conflict with the FOIA provisions for teleconferences and electronic meetings. Additionally, there was concern that this language if left untouched would set a bad precedent denying public access to actions of other public bodies.

Although a quorum of the Subcommittee was not present, the Subcommittee met informally to consider draft legislation and to take public comment on the draft. In addition to consensus language agreed to by the Subcommittee at its August meeting, the latest draft would allow the Air Board and the Water Board to meet by electronic means provided the meeting is held in compliance with the provisions of the FOIA, specifically § 2.2-3708; except that a quorum of the respective Boards would not be required to be physically assembled at one primary or central meeting location. The latest draft also required that discussions of the respective Boards held via such electronic communication means must be specifically limited to those matters for which the meeting was called, and no other matter of public business shall be discussed or transacted by the respective Boards. Due to the lack of quorum, however, no action was taken on the draft.

Rick Linker of DEQ told the Subcommittee that DEQ likes the draft and believes it to be an improvement. He noted, however, that he shared the draft with stakeholders who indicated they were not in favor of any amendment of the language that was enacted in 2008 as the law was only six months old and for fear of reopening other, unrelated issues that were at the heart of the compromise for HB1332/SB423. As a result, Mr. Linker stated that DEQ favors leaving the status quo. A representative of the City of Alexandria stated that the City's position was the same as DEQ's. Ginger Stanley of the Virginia Press Association (VPA) noted that all of the issues were thoroughly vetted by the Subcommittee, with ample opportunity for public comment. She indicated that VPA is comfortable with the draft as presented and supports it.

When asked about any consequences if the FOIA Council recommends the draft, Mr. Linker and the representative of the City of Alexandria answered that there is concern that other issues, unrelated to the electronic meeting provisions, in HB1332/SB423 would be reopened. Ms. Stanley noted that the FOIA Council has conducted three years' study of electronic communications meetings and the law in

¹ Mssrs. Fifer (chair), Miller, and Selph were present at the meeting. Senator Houck and Mssrs. Axselle and Landon were absent.

this area has become more liberal. In addition, she pointed out that access folks were not invited to the table at the 2008 Session when the compromise on HB1332/SB423 was being worked out. Finally, she stated that the FOIA Council was a great resource for a fair and balance approach with regard to public access, noting that the General Assembly created the FOIA Council to assist the General Assembly to determine what is for the public's benefit concerning issues of access. Responding to the issue that a Council-recommended draft would reopen issues that were the subject of uneasy compromise, staff advised that in Virginia there are two specific limitations on amendments to bills--the one object rule found in the Virginia Constitution and a germaneness rule which provides that any amendment to a bill must be germane to the original purpose of the bill. Staff indicated that it could draw a tighter title to the bill to limit the possibility that additional, nongermane amendments would be offered. Staff noted that the presiding officer of each house made determinations about germaneness.

Additional comment was provided by Megan Rhyne, Executive Director of the Virginia Coalition for Open Government, who noted that during General Assembly Sessions, there are plenty of bills having lots of stakeholders and which represent uneasy compromises. While stating that she was not trying to minimize the struggle that enactment of HB1332/SB423 represented, she maintained that this situation is not unique at the legislature. Ms. Rhyne echoed that the FOIA Council was created to identify and resolve public access issues. She stated that the fact that concerns about additional issues being reopened if the FOIA Council recommended legislation, while valid, was not a compelling reason not to address the access issue.

Mr. Fifer, chair of the Subcommittee, questioned why not recommend the draft given that all agree that the latest draft is better than the status quo and coupled with the fact that the access advocates were not part of the "blood oath" taken with respect to the stakeholders of HB1332/SB423. The Subcommittee directed staff to work on the title of the latest draft to limit the possibility that additional, nongermane amendments would be offered.

The next meeting of the Subcommittee is scheduled for 12:00 p.m. on Monday, December 1, 2008 in House Room D of the General Assembly Building for final action on the latest draft.

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