



To: The Freedom of Information Advisory Council Subcommittee on Electronic Meetings
From: The Virginia Coalition for Open Government
Re: HB321 & other electronic meeting rules

Monday, October 19, 2020

Dear FOIA Council subcommittee members and staff:

Thank you for your willingness to reexamine the rules surrounding electronic meetings: those held during long-term emergencies, those held short-term emergencies; those held in ordinary times; and those where individual members participate virtually in an otherwise in-person meeting.

The council first began studying electronic meetings in 2004. Over that time, the council has taken a systematic and methodical examination of the public's interests and the needs of the public bodies. The council has embraced technology as a way to enhance the public's observation of government bodies, while also leveraging it to facilitate board-member participation.

The pandemic exploded our concepts of virtual meetings. Public bodies and the public quickly learned both the promise and the pitfalls of them. After such a paradigm shift, it is tempting to assume that the rules need to change drastically, but VCOG would urge the subcommittee to continue its practice of moving forward systematically and methodically, remembering that human nature has not changed, that technology still has its limitations and that relaxation of rules to benefit the public bodies should be balanced with requirements that benefit the public.

As it has in past studies, VCOG maintains an overall preference for in-person meetings or, at a minimum, a quorum physically present in one publicly accessible spot. VCOG also continues to believe that reliable audio and video is essential to more expansive use of electronic meetings.

HB321

VCOG believes HB321 tilts the scales to the public bodies and its members without a public benefit:



- the bill adds to the number of times a member can call into a meeting;
- the bill then adds another, new reason for a member calling in (the "serious medical condition of an immediate family member that prevents the member's physical attendance");
- but the bill does not limit the number of times this new "serious medical condition of a family member" reason can be used.

Calling in for "personal matters" was added in 2012. Certainly, times may have changed, and VCOG would be open to redefining how many times a member may call into a meeting. It is worth noting, however, that the argument used in the many testimonials submitted in support of HB321 is the same one that was used in 2012: that expanding call-in participation rules will attract better board members. That argument was rejected by the 2012 council, and the testimonials do not explain why the "serious medical condition of an immediate family member" would not be covered by the "personal matters" language already in the statute.

Other topics to consider

VCOG offers some additional issues the council might consider, issues that citizens and governments have contacted VCOG about since March. We believe it is important to understand the many things that are added, lost or compromised when moving towards expanding electronic meeting use. If and when options to expand use of meetings are offered, it may be appropriate and in some cases necessary to also add options to protect public access.

- codification of a guiding role for the FOIA Council during emergencies
- creation of a designated meeting facilitator for the public body
- addition of redundancies – back-up platforms if the primary platform fails
- phone access for citizens who don't have access to video
- visibility of presentations delivered at in-person meetings
- handling written, in-person and/or public comment and public comment periods
- identification of speakers and presenters
- visual display of agenda items



VCOG looks forward to a robust discussion and a spirit of collaboration to work towards solutions that protect the health and safety of all participants, while also serving FOIA's policy goal of promoting "an increased awareness by all persons of government activities and affording[ing] every opportunity to citizens to witness the operations of government."

Many thanks for your time and attention.

A handwritten signature in black ink that reads "megan".

Megan Rhyne
Virginia Coalition for Open Government