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## Virginia Freedom of Information Advisory Council

### Electronic Meetings Subcommittee

October 20, 2020, at 1:15 p.m.

Electronic Meeting

[foiacouncil.dls.virginia.gov](http://foiacouncil.dls.virginia.gov)

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The Electronic Meetings Subcommittee (the Subcommittee) of the Virginia Freedom of Information Advisory Council (the Council) met electronically.<sup>1</sup> The meeting began with introductions and opening remarks followed by the election of Cullen Seltzer as chair with a vote of 5-0-1<sup>2</sup>. Materials presented at the meeting, as well as all written public comments, are accessible through the [Council's website](#).

#### **Presentation and Discussion: 2020 HB 321 (Levine)**

*Delegate Mark H. Levine*

*Cullen Seltzer, Subcommittee chair*

Delegate Levine gave a brief summary of HB 321 (Levine, 2020). He mentioned that the Virginia Association of Counties and the Virginia Municipal League supported the bill. He also noted that he liked the redline draft proposed by Mr. Seltzer, although it is a little broader than his original bill.

Mr. Seltzer gave a brief summary of the redline draft bill he provided and noted that the purpose behind his draft is to provide as easy of an approach to participation as possible. He mentioned the importance of the portion of his draft that discusses allowing a public body and its members to meet during a state of emergency, regardless of what business is being discussed.<sup>3</sup> Mr. Seltzer noted that although, due to the current state of emergency related to COVID-19, there was budget language<sup>4</sup> passed to alleviate some of those concerns, such language is ephemeral, and it may be best to codify more permanent language.

Members of the Subcommittee noted the following:

- Inasmuch as there will not be a diminution of access and openness, it may be a better use of a public body's resources to hold meetings virtually.

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<sup>1</sup> **Members Present:** Cullen Seltzer (chair), Billy Coleburn, Matthew Conrad, Bruce Potter, Sterling Rives, and Amigo Wade

**Members Absent:** None

<sup>2</sup> Cullen Seltzer abstained from the vote.

<sup>3</sup> Subdivision A 3 of § 2.2-3708.2 of the Code of Virginia currently allows for a public body to meet by electronic communication means without a quorum of the public body physically assembled in one location when the Governor has declared a state of emergency, provided that (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to address the emergency.

<sup>4</sup> Governor's Amendment 28, 2020 Budget (2020 Acts of Assembly, c. 1289, Item § 4-0.01 (g)).

- If a member of a public body is unable to attend a meeting due to a compelling reason, it would benefit constituents and the public for that member to still be able to participate electronically.
- Sterling Rives suggested an amendment to Mr. Seltzer's draft. He suggested adding to the end of subdivision A 1 a of § 2.2-3708.2 of the Code of Virginia the following language: "or the member is providing care to a family member with a serious medical condition." He noted that such language should address Delegate Levine's concerns without having to define "immediate family member" or having to expand the limitations in subdivision A 1 b or add a subdivision A 1 c, as was suggested in HB 321.
- Bruce Potter noted that there are two distinct issues that need to be discussed. The first is when an individual member wants to attend remotely for whatever reason but a quorum of the public body is still physically assembled in a single location. The other issue deals with when a public body can meet entirely remotely and what guidelines are necessary in that scenario.
- Billy Coleburn noted that serving in public office is a privilege and requires sacrifice. He mentioned that electronic meetings are simply not the same as being able to meet in person.
- Mr. Potter mentioned that there are some drawbacks with electronic participation in terms of transparency. A member participating electronically cannot see what's going on or see the body language of fellow members and the public.

Mr. Rives made a motion that the Subcommittee recommend to the Council as an alternative to HB 321 an amendment to § 2.2-3708.2 that would add language to the end of subdivision A 1 a that would allow for a member who is providing care to a family member with a serious medical condition to attend a public body meeting through electronic communication means. Delegate Levine asked to add language to make it clear that the providing of care to a family member must prevent a member's physical attendance at the public body meeting. Delegate Levine also expressed an interest in having the language from HB 321 added to subdivision A 1 b of § 2.2-3708.2; such language would expand participation by electronic communication means due to a personal matter to two meetings per calendar year or 10 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater. Mr. Rives amended his motion to incorporate the changes suggested by Delegate Levine. The motion was properly seconded and voted on favorably by a vote of 4-2. Staff will provide a draft bill with the proposed changes ahead of the next Subcommittee meeting.

### **Discussion: Further changes to § 2.2-3708.2**

The Subcommittee discussed subdivision A 3 of § 2.2-3708.2 regarding meeting via electronic communication means during a state of emergency declared by the Governor. Mr. Seltzer proposed removing the second condition under that provision that limits discussion during such a meeting to topics addressing the emergency. Mr. Potter noted some of the concerns and practical issues with having fully electronic public body meetings, such as allowing members of the public to join electronically to testify but not being able to follow up later with questions for or requests for more information from members of the public. He recommended taking a holistic view of what a wholly electronic meeting should look like and what the requirements should be, and not rushing to a conclusion or recommendation since the current budget language allows all public bodies to meet electronically due to the current state of emergency declared by the Governor.



Mr. Rives noted that he was concerned that Mr. Seltzer's proposed draft did not include certain language that appears in the budget language, namely the requirement that public access be granted through electronic means and, to the extent possible, videoconferencing technology. He also said the budget language has some limitations because it mentions that the business conducted electronically by a public body during the current emergency must be business that is statutorily required or necessary to continue operations. Mr. Rives said that there are times when the business of a public body may not be statutorily required or necessary to continue operations but is still beneficial.

### **Public Comment and Next Meeting**

During the period for public comment, staff noted that multiple written comments had been submitted via email. Written public comments are available through the [\*Council's website\*](#).

Staff will poll members of the Council regarding a future meeting date of the Subcommittee. Once a date is set, it will be posted on the [\*Council's website\*](#).

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

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