



Date: November 9, 2023

To: Virginia Freedom of Information Act (FOIA) Subcommittee on Electronic Meetings

From: Virginia Press Association (VPA)

Re: Public Bodies Holding Electronic meetings

The VPA appreciates the opportunity to comment on the matters before the FOIA Subcommittee on Electronic Meetings.

First, we support the narrow change suggested by Sarah Graham Taylor to amend §2.2-3708.3, and the definition of “remote participation” under §2.2-3701, to allow members of public bodies who meet the definition of a “person with a disability” under §51.5-40.1 to both participate remotely in meetings of public bodies and count toward the quorum of that public body when they participate remotely.

She came to both the VPA and the VA Coalition for Open Government to work out a solution to this narrow issue. VPA believes that this suggested amendment is one we should support and want to see move forward- it is in line with the current exemptions.

However, we continue to oppose any expansions of the law governing how public bodies can hold all electronic meetings. We at VPA continue to believe that the compromise we worked out in 2021/2022 with fellow stakeholders struck the right balance between the ability of public bodies to convene remotely through electronic means, along with electronic access for the public to view and participate in those meetings.

As the subcommittee and staff discuss this topic today, we wanted to set out a few critical points that we believe need to be an integral part of any conversation about public bodies holding electronic meetings.

1. We urge you to remember the FOIA Council’s policy that, “Representative government is best served when public officials meet face-to-face in regularly scheduled public meetings,” and that as technology advances, “the FOIA Council will continue to balance the preference for face-to-face meetings against the emerging technology in light of the clear policy statement of FOIA to afford citizens every opportunity to witness the operation of government.”
2. We also urge you to remember that the FOIA law is designed to lay out the procedure on how to conduct public meetings and how to obtain public records. It is designed to provide guidance on how the public, including the press, can access the decision-making and operation of their government.
3. It is critical for members of the press to be able to communicate with members of public bodies when they are deliberating on matters of public importance. That can best happen when meetings are held in person, but if they are not, it is critical that reporters are able to electronically contact members of public bodies to follow up or ask additional questions.
4. We encourage all public bodies, now that we have seen how streaming meetings can encourage public access to such meetings, to continue to do so even when the meetings are held in person.

Current law allows this as a way to expand public participation and we hope to see the practice continue, even as we transition back to in person meetings.

As a reminder, the current law has been in effect just one year and besides two localities in Northern Virginia, as illustrated by the public comments you've received, there has not been an outcry for further expansion.

We continue to maintain the principals that guided us in the crafting of the current law:

- Consistency for ALL public bodies to have the same set of rules to play by;
- No public body would have an unlimited number of all virtual meetings;
- No new categories of "public bodies;"

The proposal in front of you violates all three of those principals- it sets up different rules for state public bodies and local and regional bodies. It goes far beyond the undefined "advisory bodies" that the Delegate continues to say needs these broad powers to essentially never meet in person again if they so wish.

Most importantly, you cannot look at these suggested changes without also looking at the broadened ability of individual members to participate remotely, you could easily have public bodies in Virginia never being assembled together in person again.

As a reminder, under § 2.2-3708.3 B 1-4, individuals can participate remotely for an unlimited number of times if they have a temporary or permanent disability or other medical condition; a medical condition of a family member; or the member's principal residency is more than 60 miles away. They also have the ability to participate for personal reasons up to two meetings a year or 25% of the meetings, whichever is greater.

Those individual exemptions, combined with the allowance for all virtual meetings two times a year or 25% of the meetings provides plenty of flexibility for all of Virginia's public bodies and their individual members.

We urge you to adopt the recommendation as presented by Sarah Graham Taylor and preserve the rest of the law as it is.

Thank you for your consideration and service.

/VPA