



Virginia Freedom of Information Advisory Council

Electronic Meetings Subcommittee

November 9, 2023, at 1:00 p.m.

House Room 1, The Capitol

foiacouncil.dls.virginia.gov

The Electronic Meetings Subcommittee (the Subcommittee) of the Virginia Freedom of Information Advisory Council (the FOIA Council) met with Cullen Seltzer presiding.¹ The meeting began with introductions and opening remarks followed by discussion. Meeting materials, as well as all written public comments, are accessible through the [Council's 2023 Subcommittees webpage](#).

Study Issue: Participation in Electronic Meetings by Members of Public Bodies with Disabilities

At its meeting on July 27, 2023, the FOIA Council directed the Subcommittee to study issues regarding the conduct of electronic meetings, particularly whether there should be additional opportunities for members of public bodies with disabilities to use electronic means to participate, in response to public comments received at that time.

The discussion of this study issue began with staff counsel presenting proposed language from Sarah Graham Taylor, Assistant City Manager of the City of Alexandria. The proposed language aims 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.

The Subcommittee heard comments on this issue from the following members of the public:

- Ms. Taylor expressed that she hopes the Subcommittee measures the flexibility of the electronic meetings policy so people who are defined as disabled and serve on public bodies can participate virtually while counting toward the quorum.
- Mr. Seltzer asked Ms. Taylor how public bodies would determine who would fall under the definition of a person with a disability, under § 51.5-40.1. Ms. Taylor responded that public body members could self-disclose or it would be under the chair's discretion.
- Ms. Taylor clarified that the intention of the proposed language was to ensure that members of all public bodies who identify as disabled would have their voices heard.
- Delegate Elizabeth Bennett-Parker showed her support on this issue. She spoke to written comments submitted to the Subcommittee by Lucy Beadnell, The Arc of Northern Virginia, stating that she has attended a number of local government

¹ **Members Present:** Bruce Potter, Cullen Seltzer
Members Absent: Senator Mamie E. Locke

meetings deemed nonfunctional due to the lack of a quorum in person while simultaneously having members present via Zoom who were not allowed to participate due to FOIA's procedural requirements.

- Bruce Potter stated that he believes a line should be drawn between elected policy bodies and advisory committees, councils, etc. Mr. Potter proposed amending Ms. Taylor's proposal to include a differentiation between elected bodies and advisory committees or councils.

The Subcommittee members directed staff to draft a bill derived from Ms. Taylor's proposed language to consider at the next FOIA Council meeting, with the thought that there may be amendments differentiating between elected and public bodies, allowing meeting participation flexibility to members who may be caregivers, and allowing remote participation to be counted toward the quorum and with voting capabilities.

Presentation, Public Comment, and Discussion: HB 2050 (Bennett-Parker, 2023) and SB 1351 (Marsden, 2023)

The FOIA Council received numerous public comments via email regarding expanding the use of electronic meetings. Many of the comments expressed support for HB 2050, allowing, with certain exceptions, local and regional public bodies to convene as many all-virtual public meetings as each such public body deems acceptable in its individual remote participation meeting policy, to be adopted at least once annually by recorded vote at a public meeting. Many comments also asked the Subcommittee to consider SB 1351, allowing, with certain exceptions, local and regional public bodies to convene no more than 50 percent of the meetings held per calendar year, rounded up to the next whole number, as an all-virtual public meeting.

HB 2050 Discussion:

Delegate Bennett-Parker began the discussion by speaking about her bill, HB 2050. She stated that she has heard the following challenges with the current code in relation to meeting flexibilities: there needs to be a change to the current requirement because meetings are not happening or are delayed because of difficulties with attending meetings in person; therefore, many advisory boards are not meeting their in-person quorum. The Subcommittee discussed the following:

- Mr. Potter asked Delegate Bennett-Parker to clarify subsection C of her bill, asking if HB 2050 is allowing public bodies to have the flexibility to set their own policies. Delegate Bennett-Parker responded that HB 2050 would allow public bodies to meet virtually depending on the policies they set.
- The Virginia Press Association (VPA) expressed their opposition to any expansion of the law on how governing bodies hold their meetings. They stated that the current law has only been in effect for a year and they have not heard for any expansion calls from any other bodies. They believe there should be consistency among all public bodies, that no public bodies should have an unlimited number of virtual meetings, and that no new categories of public bodies are needed. VPA stressed the importance for press to meet with members of the public and that an unlimited number of virtual meetings would create more distance between the press and members of the public.



- Megan Rhyne, Virginia Coalition of Government, emphasized that it is a "bedrock democratic principle" that public bodies and the public have an opportunity to interact with one another. She stated that meetings are a place for members of a public body to interact with their constituents and these meetings serve as a gathering place for such interaction. She supports mostly in-person meetings.
- Phyllis Errico, Virginia Association of Counties, stated that she supports the bill as drafted. She supports flexibility for advisory committees and input from the public but believes ultimate policy makers should meet in person.

SB 1351 Discussion:

- Mr. Potter echoed VPA's sentiments stating that the remote participation meeting policy has only been in place for a year.
- Mr. Seltzer stated that he would support some form of HB 2050 or SB 1351. He supported the idea of having the FOIA Council consider these bills at the next meeting.

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

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