

On Wed, May 26, 2021 at 9:47 AM Molloy, Michael A. <[mamolloy@fcps.edu](mailto:mamolloy@fcps.edu)> wrote:

Thank you for the opportunity to provide input to the Virginia Freedom of Information Advisory Council's Meetings Issues Subcommittee regarding your consideration of HB 1997 (Murphy, 2021), which would increase the number of board members that constitute a meeting under the Virginia Freedom of Information Act and when conversations between subgroups of board members constitutes only an "informal assemblage."

The Fairfax County School Board supports Delegate Murphy's legislation, as it would help to address an inequity in current Code for larger boards regarding how current open meeting thresholds affect boards of different sizes. Currently, a board with only 5 members can have informal discussions which include 40% of that Board's members without that discussion becoming a formal "meeting," while a board like the Fairfax County School Board, which consists of 12 members, can only include 17% of the Board in informal discussions before open meeting requirements apply (See Table 1 below).

**Table 1 - Current Statutory Threshold for "Informal Assemblage"**

<b>Members consisting of an "Informal Assemblage"</b>	<b>Total Board Size</b>	<b>Percentage of board consisting of an "Informal Assemblage"</b>	<b>Number of meetings required to informally confer with all Board members</b>
2	5	40%	3
2	6	33%	3
2	7	29%	4
2	8	25%	4
2	9	22%	5
2	10	20%	5
2	11	18%	6
2	12	17%	6

For larger boards, that low threshold has real impacts on staff time and on the organization's operations. Providing background information to or gathering informal preliminary input from board members as staff works on issues without having to convene formal open meetings requires as few as 3 informal sessions for smaller boards, but in the case of a 12 member board it requires at least 6 different informal conversations – which again increases operational inefficiencies and has real impacts on staff time. These impacts and inefficiencies translate to higher operational costs for larger boards.

Concerns that a uniform change in the open meeting threshold would allow smaller boards to meet and act entirely behind the scenes are likely unfounded due to requirements that meetings constituting a quorum need to be open regardless of the

member threshold. However, should the Subcommittee choose not to go forward with the more uniform change envisioned by HB 1997, we would urge you to consider at least applying the change in number of members constituting an open meeting to larger Boards only.

Table 2 below shows an example of how limiting the change in what constitutes an “informal assemblage” of members only to boards with 9 or more members would put larger boards on more equal footing in terms of percentages of members who could discuss issues informally and number of required meetings to conduct those informal conversations with their smaller counterparts. In all cases such informal discussions would continue to constitute only a small fraction of each total board’s total membership, but the change would help to address current operational inefficiencies for larger boards.

**Table 2 – Changing Statutory Threshold for “Informal Assemblage” for Boards of 9 or more members**

<b>Members consisting of an “Informal Assemblage”</b>	<b>Total Board Size</b>	<b>Percentage of Board consisting of an “Informal Assemblage”</b>	<b>Number of meetings required to informally confer with all Board members</b>
2	5	40%	3
2	6	33%	3
2	7	29%	4
2	8	25%	4
3	9	33%	3
3	10	30%	4
3	11	27%	4
3	12	25%	4

We appreciate the Council’s willingness to discuss this issue and to consider changes to address the inequities in how the current definitions of “meeting” and “informal assemblage” affect Boards of different size differently. We look forward to working with the Council as you continue your discussions.

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