

To: Freedom of Information Advisory Council Subcommittee on Meetings

Re: SB876 (Sen. Ebbin's bill on last-minute agenda additions)

Date: June 30, 2025

Dear Subcommittee Members:

As requested by the subcommittee at its June 16 meeting, the Virginia Coalition for Open Government, Fairfax County and Arlington County and several others have been working together on draft language that might help this bill move forward during the next legislative session. Together, the groups have made progress, though there is still a sticking point.

Below is a draft that we generally agree on.

Amend 2.2-3707(G) as follows by adding the following language after the first sentence in (G):

Public bodies **that are excepted from holding all-virtual public meetings pursuant to § 2.2-3708.3(C)**, shall also post any proposed agenda on the public body's official government website, if any, prior to the meeting. No final action may be taken on items added to the agenda after the meeting commences unless they are time-sensitive or are the subject of a closed session properly identified in a motion in accordance with § 2.2-3711.

For purposes of this subsection, "final action" means a vote, adjudication, or other formal action taken by a public body that completes the matter or acts as final consideration of an item. Final action does not include:

- a. Referral to a committee or advisory body.
- b. Referral to a future meeting for action.
- c. Direction to staff to provide further information.
- d. Issuance of commending or memorial proclamations.

Leave the remainder of G ("The proposed agenda for meetings of state public bodies...") intact.

Neither VCOG nor the Virginia Press Association endorses the phrase highlighted in red above, which seeks to limit the section's application by excluding what are commonly known as advisory bodies. VCOG's and VPA's position is that FOIA is supposed to be a statute of general application. Breaking bodies down by their relative importance, function, or composition creates artificial constructs that can be easily misunderstood and/or manipulated.

It is the position of Fairfax and Arlington County** that "requiring smaller advisory bodies that do not take final actions or have decision authority creates an undue administrative burden on both the civilian members of the body and County staff. As an example, Fairfax County currently has 80 different boards, advisory councils, and commissions ranging in size and purpose, all supported by County staff in corresponding agencies. The groups do not have final decision authority but rather provide counsel to the Board of Supervisors on specific topics from a community viewpoint. This group already has an exception for virtual meeting policy to encourage participation by civilian members, setting the precedent for an exemption here."

Neither this draft nor these arguments are set in stone, and the parties remain committed to further dialogue.

Signed,

Megan Rhyne

Virginia Coalition for Open Government

Takis Karantonis, Chair

Arlington County Board