



# FAIRFAX COUNTY PARK AUTHORITY

## M E M O R A N D U M

**TO:** Chairman and Members  
Park Authority Board

**VIA:** Jai Cole, Executive Director

**FROM:** Sara Baldwin, Deputy Director/COO

**DATE:** July 3, 2024

### *Agenda*

**Administration and Board Management Committee  
(Committee of the Whole)  
Wednesday, July 10, 2023 – 6:25 pm  
Board Room, Herrity Building  
Chairman: Faisal Khan  
Vice Chair: Maggie Godbold**

1. Legislative Program - 2024 (with presentation) – Information\*
2. Adoption of the Revised Policy for Remote Participation in Public Meetings – Policy 111 and the Revised Policy for All-Virtual Public Meetings – Policy 112 (with presentation) – Action\*

\*Enclosures



If accommodations and/or alternative formats are needed, please call (703) 324-8563. TTY (703) 803-3354

Board Agenda Item

**INFORMATION – 1**

Legislative Program – 2024

Staff will provide a legislative update on the status of the 2024 General Assembly legislative activities and discuss preparations for 2025.

ENCLOSED DOCUMENTS:

Legislative Items Passed for 2024

STAFF:

Jai Cole, Executive Director

Aimee L. Vosper, Deputy Director/CBD

## 2024 Legislative Session Items Passed

FCPA Supported - Positive Impact		
<a href="#">HB1167</a>	<b>English ivy; local prohibition on sale, civil penalty.</b>	Local prohibition on the sale of English ivy; civil penalty. Authorizes any locality to adopt an ordinance prohibiting the sale of English ivy, with violations punishable by a civil penalty not to exceed \$50 for a first violation and not to exceed \$200 for a subsequent violation within 12 months
<a href="#">HB175</a>	<b>Assault firearms; carrying in public areas prohibited, penalty.</b>	Carrying assault firearms in public areas prohibited; penalty. Prohibits the carrying of certain semi-automatic center-fire rifles, pistols, and shotguns on any public street, road, alley, sidewalk, or public right-of-way or in any public park or any other place of whatever nature that is open to the public. Under current law, the current prohibition on carrying certain shotguns and semi-automatic center-fire rifles and pistols applies to a narrower range of firearms, only in certain localities, and only when such firearms are loaded.
<a href="#">HB208</a>	<b>Comprehensive plan; healthy communities strategy</b>	Comprehensive plan; healthy communities strategy. Authorizes localities, beginning July 1, 2024, to adopt a healthy communities strategy as part of its next and any subsequent reviews of the comprehensive plan. The bill provides that the locality's strategy may include identifying neighborhoods with major sources of pollution or hazardous waste and identifying objectives and policies to (i) reduce health risks in such neighborhoods, (ii) promote civic engagement by residents of such neighborhoods, and (iii) prioritize improvements and programs that address the needs of such neighborhoods.
<a href="#">HB320</a>	<b>Pesticide control exemptions; herbicide applications by unpaid volunteers</b>	Pesticide control exemptions; herbicide applications by unpaid volunteers. Exempts from the provisions of state pesticide laws and regulations any unpaid volunteer who uses or supervises the use of any nonrestricted herbicide with the express authorization of a local political subdivision for the sole purpose of controlling invasive plants or noxious weeds on properties owned by such local political subdivision. The bill provides that such unpaid volunteer shall use such herbicide under the direct supervision of a certified applicator and the local political subdivision shall provide instruction to the unpaid volunteer prior to application on (i) the risks associated with the herbicide utilized, (ii) the proper use of equipment used to apply the herbicide, (iii) other information to prevent an unreasonable adverse effect on the environment, and (iv) any other information relevant to the specific herbicide utilized.

## 2024 Legislative Session Items Passed

FCPA Supported - Positive Impact		
<a href="#">HB459</a>	<b>Trees; conservation during land development process in certain localities.</b>	Conservation of trees during land development process in certain localities. Expands authority of certain localities to adopt an ordinance providing for the planting and replacement of trees during the development process by allowing a tree canopy fund that currently applies to the planting of trees on public property to include maintenance of trees on public property and planting and maintenance of trees on private property. The bill removes a provision that requires that any funds collected for the purposes of the tree canopy fund be returned to the original contributor if not spent within five years but maintains the requirement that such funds be spent within five years. The bill also includes an expansion of the canopy credit and a provision that will require a local tree conservation ordinance to meet the standards set out in the statute.
<a href="#">HB47</a>	<b>Invasive plant species; requirements for retail sales.</b>	Invasive plant species; retail sales. Requires, for the retail sale of any invasive plant species on a list established by the Department of Conservation and Recreation, such plant be accompanied by conspicuous signage that identifies the plant as invasive and includes the words "Plant with caution: invasive plant species. May cause environmental harm. Ask about alternatives."
<a href="#">HB914</a>	<b>Local historic district; locality to establish one or more.</b>	Creation of local historic district. Allows a locality to, by ordinance, establish one or more historic districts for the purpose of increasing awareness and support for historic conservation in the locality. The locality may in each historic district provide incentives for the conservation and renovation of certified historic structures, as defined in the bill, and grant tax incentives and provide certain regulatory flexibility within the limits of the Constitutions of Virginia and of the United States.
<a href="#">HB960</a>	<b>Historic rehabilitation; maximum amount of tax credit.</b>	Historic rehabilitation tax credit; maximum amount of tax credit. Increases from \$5 million to \$10 million the maximum amount of the historic rehabilitation tax credit, including amounts carried over from prior taxable years, that may be claimed by a taxpayer in any taxable year beginning in taxable year 2024. Beginning July 1, 2024, the aggregate amount of credits available shall not exceed \$75 million per fiscal year.
<a href="#">SB099</a>	<b>Assault firearms; carrying in public areas prohibited, penalty</b>	Carrying assault firearms in public areas prohibited;penalty. Prohibits the carrying of certain semi-automatic center-fire rifles, pistols, and shotguns on any public street, road, alley, sidewalk, or public right-of-way or in any public park or any other place of whatever nature that is open to the public. Under current law, the current prohibition on carrying certain shotguns and semi-automatic center-fire rifles and pistols applies to a narrower range of firearms, only in certain localities, and only when such firearms are loaded

## 2024 Legislative Session Items Passed

FCPA Supported - Positive Impact		
<a href="#">SB121</a>	<b>Trees; conservation during land development process in certain localities.</b>	Conservation of trees during land development process in certain localities. Expands authority of certain localities to adopt an ordinance providing for the planting and replacement of trees during the development process by allowing a tree canopy fund that currently applies to the planting of trees on public property to include maintenance of trees on public property and planting and maintenance of trees on private property. The bill removes a provision that requires that any funds collected for the purposes of the tree canopy fund be returned to the original contributor if not spent within five years but maintains the requirement that such funds be spent within five years. The bill also includes an expansion of the canopy credit and a provision that will require a local tree conservation ordinance to meet the standards set out in the statute.
<a href="#">SB306</a>	<b>Invasive plant species; retail sales, civil penalty.</b>	Invasive plant species; retail sales; civil penalty. Requires, for the retail sale of any invasive plant species for outdoor use on a list established by the Department of Conservation and Recreation, such plant be accompanied by conspicuous signage that identifies the plant as invasive. The bill requires the Commissioner of Agriculture and Consumer Services to designate the format, size, and content of such signage no later than October 1, 2024, and requires the Commissioner to issue a stop sale order and mark or tag a plant in a conspicuous manner when an invasive plant is for sale at a retail outlet without appropriate signage. In such case, the bill requires the Commissioner to give written notice of a finding made to the owner, tenant, or person in charge of such retail outlet and requires the stop sale order issued to remain in effect until the required signage is posted. Any person who violates the provisions of the bill is subject to a civil penalty not to exceed \$500.

## 2024 Legislative Items Passed

Not Applicable or No Significant Impact to FCPA		
<a href="#">HB1395</a>	<b>Historic preservation; filing of a historic designation application</b>	Historic preservation. Provides that the filing of a historic designation application shall stay a locality from issuing any permit to raze or demolish a proposed historic landmark, building, or structure until 30 days after the rendering of the final decision of the governing body of the locality. The bill also specifies that the affected property owner, the applicant, or any resident of the locality who provided public input on the locality's historic district plan may appeal to the circuit court for review of any final decision of the governing body pursuant to such application.
<a href="#">HB1415</a>	<b>HB 1415 Historic structures; civil penalty for demolition</b>	Civil penalty for demolition of historic structures. Authorizes any locality to adopt an ordinance establishing a civil penalty for the razing, demolition, or moving of a building or structure that is located in a historic district or that has been designated by a governing body as an historic structure or landmark in violation of an ordinance that no such building or structure shall be razed, demolished, or moved without the approval of a review board. The bill provides that such civil penalty shall not exceed the market value of the property as determined by the assessed value of the property at the time of razing, demolition, or moving of the building or structure.
<a href="#">HB892</a>	<b>Farmland Preservation, Office of; transfers Office to Dept. of Forestry.</b>	Department of Agriculture and Consumer Services; Department of Forestry; Office of Farmland Preservation transferred. Transfers from the Department of Agriculture and Consumer Services to the Department of Forestry the Office of Farmland Preservation and its powers and duties and reporting requirements, the Virginia Farm Link Program, the Century Farm Program, and the Virginia Farmland Preservation Fund. The bill renames the Office as the Office of Working Lands Preservation. The bill makes technical amendments to effectuate the transfer.
<a href="#">HB928</a>	<b>Interference with commercial fishing vessel; penalties.</b>	Interference with commercial fishing vessel; penalties. Provides that a person who approaches a commercial fishing vessel without the consent of the owner or person in charge of such vessel with the intent to coerce, intimidate, or harass the captain or crew of such vessel or interfere with the operations of such vessel is guilty of a Class 1 misdemeanor. The bill makes it a Class 6 felony to communicate to another person by any means any threat to (i) kill or do bodily injury to a person or persons engaged in the activity of commercial fishing on the waters of the Commonwealth or (ii) bomb, burn, destroy, or in any manner damage any commercial fishing vessel, and increases this penalty to a Class 5 felony if such threat places the captain or crew in reasonable apprehension of death or bodily injury. The bill makes it a Class 6 felony to intentionally or recklessly damage, injure, tamper with, deface, or destroy a commercial fishing vessel or any associated gear. Finally, the bill deems a person to be ineligible for any hunting or fishing license for a certain period of time if such person is found guilty of an offense set out in the bill.

## 2024 Legislative Items Passed

Not Applicable or No Significant Impact to FCPA		
<a href="#">SB157</a>	<b>Legal notices and publications; online-only news publications, requirements.</b>	Legal notices and publications; online-only news publications; requirements. Provides that, where any ordinance, resolution, notice, or advertisement is required by law to be published in a newspaper, such ordinance, resolution, notice, or advertisement instead may be published in an online-only news publication subject to certain requirements specified in the bill. The bill sets out a process by which an online-only news publication shall petition the circuit court of the appropriate jurisdiction to publish such ordinances, resolutions, notices, or advertisements and authorizes the court to grant such online-only news publication the authority to publish such ordinances, resolutions, notices, or advertisements for a period of one year. The bill also describes the process by which an online-only news publication may continue renewing such authority to publish each successive year.
<a href="#">HB1058</a>	<b>Chesapeake Bay Public Access Authorities; singular license for waterfowl blinds.</b>	Department of Wildlife Resources; singular license for waterfowl blinds in Chesapeake Bay Public Access Authorities. Requires the Department of Wildlife Resources to develop a singular license and license plate supplied with such license for all stationary blinds granted to and located on property owned by the Middle Peninsula Chesapeake Bay Public Access Authority and the Northern Neck Chesapeake Bay Public Access Authority.
<a href="#">HB1100</a>	<b>Conservation of trees during land development process</b>	Conservation of trees during land development process. Expands current provisions that provide that certain localities in Planning District 8 (Northern Virginia) may, by ordinance, require conservation of trees during the land development process by making such provisions available to localities statewide
<a href="#">HB113</a>	<b>Handguns; possession, purchase, or transportation by persons convicted of certain drug offenses</b>	Possession, purchase, or transportation of handgun by persons convicted of certain drug offenses and operating a boat or vehicle while intoxicated prohibited; penalty. Provides that any person who within a five-year period has been convicted of two misdemeanor driving or boating while intoxicated offenses shall be ineligible to possess, purchase, or transport a handgun. The bill also provides that any person who within a three-year period has been convicted of two misdemeanor drug offenses shall be ineligible to possess a handgun. Under current law, such person who has been convicted of two misdemeanor drug offenses is ineligible to purchase or transport a handgun. The bill also provides that any person who is convicted of a second or subsequent offense for violating the prohibition on possessing, purchasing, or transporting a handgun following convictions of these offenses shall be given the opportunity to voluntarily relinquish any firearm in his possession.

## 2024 Legislative Items Passed

Not Applicable or No Significant Impact to FCPA		
<a href="#">HB1186</a>	<b>All-terrain power wheelchairs in state parks; DCR shall establish two-year pilot program.</b>	Department of Conservation and Recreation; two-year pilot program; all-terrain power wheelchairs in state parks. Provides that the Department of Conservation and Recreation shall establish a two-year pilot program beginning October 1, 2024, and ending October 30, 2026, to enhance accessibility for individuals with limited mobility in Virginia's state parks by providing all-terrain power wheelchairs that may be used by such persons during their visits. The bill permits the Department to choose the locations for the pilot program and enter into a contract for the purchase of all-terrain power wheelchairs to be used in the pilot program. The bill allows the Department to adopt guidelines to administer the pilot program and requires the Department to submit a report on the outcome of the pilot program to the Chairmen of the House Committees on Agriculture, Chesapeake and Natural Resources and Appropriations and the Senate Committees on Agriculture, Conservation and Natural Resources and Finance and Appropriations by November 1, 2026.
<a href="#">HB1458</a>	<b>Chief Resilience Officer of the Commonwealth; moves position under the Governor, etc</b>	Chief Resilience Officer of the Commonwealth; Office of Commonwealth Resilience; Interagency Resilience Working Group; Virginia Community Flood Preparedness Fund; Resilient Virginia Revolving Fund; Advisory Review Committee. Moves the position of Chief Resilience Officer (CRO) from under the Secretary of Natural and Historic Resources to under the Governor and creates an Office of Commonwealth Resilience to support the CRO in his functions and duties. The bill requires the CRO to convene an Interagency Resilience Working Group to support the coordination of planning and implementation of resilience efforts, eliminates the position of Special Assistant to the Governor for Coastal Adaptation and Protection, and requires the Director of the Department of Conservation and Recreation to convene an Advisory Review Committee to assist in the distribution of loans and grants from the Virginia Community Flood Preparedness Fund. The bill also requires the Director to convene an Advisory Review Committee to assist in the distribution of loans and grants from the Resilient Virginia Revolving Fund and adds the Secretary of Natural and Historic Resources and the CRO to the list of those with whom the Virginia Resources Authority is required to consult in directing the distribution of loans or grants from the Fund. The bill requires the Department to make available for public inspection at the office of the Department and on a publicly accessible website records of each application for grants and loans from the two Funds and the actions taken thereon.

## 2024 Legislative Items Passed

Not Applicable or No Significant Impact to FCPA		
<a href="#">HB234</a>	<b>All-terrain vehicles and off-road motorcycles; seizure, impounding, and disposition.</b>	All-terrain vehicles and off-road motorcycles; seizure, impounding, and disposition. Authorizes the governing body of any city to provide by ordinance for the lawful seizure, impounding, and disposition of an illegally operated all-terrain vehicle or off-road motorcycle operated on a highway or sidewalk within such city.
<a href="#">HB24</a>	<b>Amber warning lights; flashing lights on certain fox hunting vehicles</b>	Amber warning lights; certain hunting vehicles. Authorizes road whips, defined in the bill, who are operating vehicles during certain fox hunts to display flashing amber warning lights when such vehicles are not in motion for the purpose of warning other vehicles of such hunt happening in the area. The bill requires such vehicles to also display a sign reading "Horse Crossing With Rider."
<a href="#">HB264</a>	<b>Legal notices and publications; online-only news publications, requirements.</b>	Legal notices and publications; online-only news publications; requirements. Provides that, where any ordinance, resolution, notice, or advertisement is required by law to be published in a newspaper, such ordinance, resolution, notice, or advertisement instead may be published in an online-only news publication subject to certain requirements specified in the bill. The bill sets out a process by which an online-only news publication shall petition the circuit court of the appropriate jurisdiction to publish such ordinances, resolutions, notices, or advertisements and authorizes the court to grant such online-only news publication the authority to publish such ordinances, resolutions, notices, or advertisements for a period of one year. The bill also describes the process by which an online-only news publication may continue renewing such authority to publish each successive year
<a href="#">HB288</a>	<b>Stationary blinds for waterfowl; providing location of blinds to Department of Wildlife Resources</b>	Stationary blinds for waterfowl; providing location of blinds to Department of Wildlife Resources. Requires a person that is obtaining a waterfowl blind license, at the time of the transaction, to provide the unique location of each stationary waterfowl blind to the Department of Wildlife Resources, identified as standardized latitude and longitude coordinates, using the decimal degrees format with a minimum of five digit precision. The bill further requires the Department to publish such coordinates by November 1 of each year, excluding any customer personal information, on its website in a searchable, publicly accessible, and conspicuous manner. This bill has a delayed effective date of January 1, 2025.
<a href="#">HB516</a>	<b>Prescription drugs; labels provided for blind and disabled users.</b>	Prescription drugs; labels; blind and disabled users. Requires pharmacies to notify any person receiving a prescription drug that an accessible prescription label is available upon request at no cost and to provide to individuals who are blind, visually impaired, or otherwise print disabled accessible prescription labels that meet specified accessibility requirements. The bill requires the Board of Pharmacy to promulgate regulations implementing the provisions of the bill no later than April 1, 2025.

## 2024 Legislative Items Passed

Not Applicable or No Significant Impact to FCPA		
<a href="#">HB985</a>	<b>High polycyclic aromatic hydrocarbon; prohibits pavement sealants that contain, civil penalty.</b>	High polycyclic aromatic hydrocarbon pavement sealants; prohibition; civil penalty. Prohibits the sale or distribution of any pavement sealant that contains polycyclic aromatic hydrocarbon concentrations greater than one percent by weight on or after July 1, 2024, except that a retailer may continue to sell any existing inventory that remains in stock on that date. The bill also prohibits the application or use of such sealants on or after July 1, 2025. Any person who violates either prohibition is subject to a civil penalty of \$250, to be paid into the Virginia Environmental Emergency Response Fund.
<a href="#">SB017</a>	<b>Motor sports facilities; designating as historic landmarks and enterprise zones.</b>	Motor sports facilities; historic landmark designation; enterprise zone. Designates all motor sports facilities, as defined in relevant law, in the Commonwealth as Virginia Historic Landmarks and as enterprise zones.
<a href="#">SB13</a>	<b>Child day programs; licensure and use of office buildings</b>	Board of Education; child day programs; licensure and use of office buildings. Directs the Board of Education to amend its regulations to permit any child day program to operate in an office building, defined as any building containing more than two rental units that are rented primarily for retail, commercial, or professional use, provided such office building satisfies the legal and regulatory requirements for licensure as a child day program.
<a href="#">SB461</a>	<b>Department of Forestry; Forest Conservation Plan required</b>	Department of Forestry; Forest Conservation Plan required. Requires the Department of Forestry, in coordination with a stakeholder advisory group, to develop a Forest Conservation Plan no later than November 1, 2025, and update such plan every five years thereafter. The bill requires the Department to post and maintain on its website the most recent version of the Plan and submit the Plan to the Governor and Chairmen of the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources no later than November 30, 2025, and November 30 every five years thereafter
<a href="#">SB516</a>	<b>All-terrain vehicles and off-road motorcycles; seizure, impounding, and disposition.</b>	All-terrain vehicles and off-road motorcycles; seizure, impounding, and disposition. Authorizes the governing body of any city to provide by ordinance for the lawful seizure, impounding, and disposition of an illegally operated all-terrain vehicle or off-road motorcycle operated on a highway or sidewalk within such city.

## 2024 Legislative Items Passed

Not Applicable or No Significant Impact to FCPA		
<a href="#">SB616</a>	<b>Farmland Preservation, Office of; transfers Office to Dept. of Forestry.</b>	Department of Agriculture and Consumer Services; Department of Forestry; Office of Farmland Preservation transferred. Transfers from the Department of Agriculture and Consumer Services to the Department of Forestry the Office of Farmland Preservation and its powers and duties and reporting requirements, the Virginia Farm Link Program, the Century Farm Program, and the Virginia Farmland Preservation Fund. The bill renames the Office as the Office of Working Lands Preservation. The bill makes technical amendments to effectuate the transfer.
<a href="#">SB702</a>	<b>Early childhood care and education; publicly funded providers; exemption from licensure.</b>	Early childhood care and education; publicly funded providers; exemption from licensure for certain child day programs. Excepts military child care fee assistance or any child care subsidy paid by a branch of the Armed Forces of the United States from the federal funds that would otherwise render a child day program as a "publicly funded provider," as that term is defined and used in relevant law relating to early childhood care and education. The bill also exempts from licensure by the Superintendent of Public Instruction any child day program that (i) serves only dependent children of military personnel and (ii) (a) is located on a military base or federal property or (b) is certified as a family child care provider by a branch of the Armed Forces of the United States and provides that any branch of the Armed Forces of the United States or its agent, including an installation commander of a military base on which a child day program is located, may assume responsibility for approving or determining which children may be served by the program that is so exempted from licensure.

## 2024 Legislative items Passed

### FCPA did not support - Adverse Impact

<a href="#">HB529</a>	<b>Trees; expands existing local gov't. authority to conserve or replace during development process.</b>	Conservation and replacement of trees during development process. Expands existing local government authority to conserve or replace trees during the development process by allowing localities to establish higher tree canopy replacement percentages, based on density per acre, lot size, or any other measurement relevant to the practices of the locality to achieve MS4 stormwater nutrient reductions, mitigate urban heat islands, increase resilience to climate change, including reducing coastal and inland flooding, and mitigate air pollution. The bill also alters the current process for granting exceptions to a local ordinance by removing a provision that requires the granting of an exception when strict application of the ordinance would result in unnecessary or unreasonable hardship to the developer and replacing it with a determination by the locality that the strict application would be unreasonable in a specific instance. The bill makes numerous technical amendments.
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# 2024 Legislative Update



July 10, 2024

# Legislation Process:

## Review and Passing of Bills - 2024 Session Review

- ✓ County Legislative Team (CLT) lobbies for Fairfax County.
- ✓ CLT informs FCPA legislative review team of proposed bills.
- ✓ FCPA reviews proposed bills and potential impacts and provides feedback to CLT.
- ✓ CLT lobbies for or against bills based on the legislative agenda and input from FCPA.
- ✓ Virginia General Assembly passes bills.
- ✓ Governor of Virginia passes or vetoes bills in April.



# 2024 General Assembly Session

## FCPA Summary of Bills Reviewed

- ✓ 2024 GA considered 2194 bills and resolutions
- ✓ 67 bills were referred for FCPA review at least once
- ✓ 35 ultimately enacted
- ✓ Most new laws take effect July 1, 2024
- ✓ Staff will review all bills that may have an impact on FCPA or the County



# Fairfax County Legislative Priorities

## 1) K-12 Funding - Joint Position with Fairfax County School Board

*Public education funding in the Commonwealth is enshrined in the Virginia Constitution as a joint responsibility of both state and local governments, so it is essential that the state fully and appropriately meet its Constitutional responsibility to adequately fund K-12 education. Unfortunately, the Commonwealth continues to allow the gap between state funding and the actual costs of providing a high-quality education, particularly in high cost-of-living jurisdictions like Fairfax County, to expand.*



# Fairfax County Legislative Priorities

## 2) Washington Metropolitan Area Transit Authority (WMATA) and Regional Transportation Funding

*The Commonwealth must fully restore the \$102 million of regional funding to the Northern Virginia Transportation Authority (NVTA) that was previously diverted to WMATA in 2018, to ensure that transportation projects continue to advance in Northern Virginia after decades of state underfunding (approximately \$63.5 million has been restored thus far). The Commonwealth must also provide dedicated and sustainable funding for WMATA that addresses the looming budget shortfall – putting the agency on sound financial footing without diverting resources from other transportation needs in Northern Virginia and the Commonwealth.*



# Fairfax County Legislative Priorities

## 3) Transportation Funding

*The Commonwealth should build upon the successful enactment of significant transportation revenues by the 2013 and 2020 GAs to ensure sufficient funding for transportation needs, which include new projects, state road maintenance (encompassing improved repaving, snow removal, mowing in the right-of-way, and stormwater management), and continued state assistance for local and regional transit systems (including the Fairfax Connector, the Virginia Railway Express, and WMATA).*



# Fairfax County Legislative Priorities

## 4) Local Authority

*Existing local government authority must be preserved and expanded, particularly in such key areas as taxation, land use, and the protection of public health, safety, and welfare. Further, local authority should be enhanced to provide localities additional flexibility in the administration of local government. Finally, local government representatives should be included on all commissions or bodies established by the state for the purpose of changing or reviewing local revenue authority or governance.*

*Each level of government has unique strengths. However, because Virginia is a Dillon Rule state, local governments are significantly restricted in their authority, which impedes their ability to react quickly and efficiently to emerging problems. In many instances, an overemphasis on statewide uniformity does not adequately consider the particular issues experienced in growing and urbanizing localities in Northern Virginia, limiting the ability of local governments to respond to community standards and priorities.*



## Items of Note that have Passed

### HB 816 FOIA; meetings held through electronic communication during declared states of emergency.

Virginia Freedom of Information Act; effective date of procedures for conducting meetings held through electronic communication means during declared states of emergency. Provides that the provisions for conducting a meeting by electronic means due to a state of emergency stated in the Virginia Freedom of Information Act (FOIA) are declarative of existing law since March 20, 2020, with respect to the Governor's declared state of emergency due to COVID-19. Under the bill, any meeting by a public body using electronic communication means occurring from that date until July 1, 2021, and any otherwise lawful action taken at it is validated with respect to FOIA if the body provided public notice, public access, and public comment commensurate with the requirements of existing FOIA provisions regarding electronic and closed meetings. The bill is a response to the case *Berry v. Bd. of Supervisors* (Va. 2023) and is a recommendation of the Virginia Freedom of Information Advisory Council. This bill is identical to SB 244.



## Items of Note that have Passed

### HB 818 Virginia Freedom of Information Act; amends definition of meeting, provisions of Act

Virginia Freedom of Information Act; definitions of meetings and public business. Exempts certain public meetings from the definition of "meeting" under the Virginia Freedom of Information Act to clarify that three or more members of a public body may appear and participate in such public meeting without violating the Act, provided that no public business is transacted or discussed. The bill also exempts members of a public body who attend a public meeting of a second public body without violating the Act, provided that no public business is transacted or discussed. Finally, the bill defines "public business" as activity that a public body has undertaken or proposed to undertake on behalf of the people it represents.

The bill states that its provisions are declarative of existing law. This bill is identical to SB 36.



## Items of Note that have Passed

### HB 894 Virginia Freedom of Information Act; electronic meetings

Virginia Freedom of Information Act; electronic meetings. Amends the number of all-virtual public meetings that public bodies, with certain exceptions, may convene in a calendar year to no more than two times per calendar year or 50 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater. Current law limits the number of all-virtual public meetings to no more than two times per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater. The bill also provides that with respect to all-virtual public meetings, when audio-visual technology is available, a member of a public body shall, for purposes of a quorum, be considered absent from any portion of the meeting during which visual communication with the member is voluntarily disconnected or otherwise fails or during which audio communication involuntarily fails. This bill is identical to SB 734.



# 2025 Legislative Process

- ✓ County Legislative Team (CLT) sends out request for possible 2025 legislative items, these are due in August 2024.
- ✓ Board Members and county staff identify and propose legislative items.
- ✓ CLT vets legislative items and schedules those that make it onto the County's Legislative Committee Agenda.
- ✓ County's Legislative Committee hears the item(s) and consensus is formed to move or not move an item onto the county's legislative agenda.
- ✓ County's Legislative Agenda goes to Richmond in the fall of 2024



# Request for possible 2025 Legislative Items

- ✓ Any ideas for the CLT to consider for the 2025 VA General Assembly?
- ✓ Submit ideas to Aimee Vosper by July 30th.
- ✓ Link to 2024 GA Fairfax County Adopted Legislative Program: [Final Report to Board of Supervisors \(fairfaxcounty.gov\)](#)



Board Agenda Item  
July 10, 2024

## **ACTION – 1**

### Adoption of the Revised Policy for Remote Participation in Public Meetings - Policy 111 and the Revised Policy for All-Virtual Public Meetings – Policy 112

#### ISSUE:

Revisions are required to the Park Authority Board Policies regarding Remote Participation in Public Meetings and All-Virtual Public Meetings due to recently adopted state legislation.

#### RECOMMENDATION:

The Executive Director recommends the Park Authority Board adopt the revisions to Policy 111 - Remote Participation in Public Meetings and to Policy 112 - All-Virtual Public Meetings.

#### TIMING:

Approval is requested on July 25, 2024, to ensure that the Park Authority Board's electronic meetings policies are updated to meet the requirements of the new legislation.

#### BACKGROUND:

The Virginia Governor recently signed into law new guidelines regarding holding public meetings using electronic communications. There are new requirements for remote participation by board members and for all-virtual public meetings that went into effect on July 1, 2024. This new legislation requires the Park Authority Board to update their existing policies regarding board members participating in public meetings remotely and holding all-virtual public meetings. These Policy adoptions ensure that these meetings shall be conducted lawfully under FOIA.

To meet FIOA, meetings must be conducted either (1) in-person, with a quorum of the public body physically present and the public also able to physically attend; or (2) completely via electronic communication with the members and the public calling in to a central phone line or connecting to a video platform.

Updates to each of the Park Authority Board's policies are outlined below:

#### Policy 111 – Remote Participation in Public Meetings

- The policy must be reviewed and readopted annually.

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- The policy does not prohibit any individual member who is lawfully participating either remotely or in an all-virtual meeting from voting on matters before the Park Authority Board.
- Added language to define “person with a disability” and “caregiver” as terms.
- Allows a person with a disability or a caregiver to participate remotely and count towards quorum as if the individual were physically present at the in-person board meeting.

Policy 112 – All-Virtual Public Meetings

- The policy must be reviewed and readopted annually.
- The policy does not prohibit any individual member who is lawfully participating either remotely or in an all-virtual meeting from voting on matters before the Park Authority Board.
- Allows for not more than two all-virtual public meetings, or more than 50% of the board’s meetings rounded up to the next whole number, whichever is greater, during the calendar year.
- The policy states that a member of the Park Authority Board shall, for the purposes of quorum, be considered absent from any portion of the meeting during which visual communication with the member is voluntarily disconnected or otherwise fails or during which audio communication involuntarily fails.

The board must approve these updates to the existing policies allowing all-virtual public meetings and meetings allowing remote participation in order for these policies to be in effect going forward.

FISCAL IMPACT:  
None

ENCLOSED DOCUMENTS:

Attachment 1: Proposed Revisions to Policy 111 for Remote Participation in Public Meetings

Attachment 2: Proposed Revisions to Policy 112 – All Virtual Public Meetings

Attachment 3: Virginia General Assembly HB 1040 – Virginia Freedom of Information Act

Attachment 4: Virginia General Assembly HB 894 – Virginia Freedom of Information Act

STAFF:

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Aimee Vosper, Deputy Director/CBD

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Board Agenda Item  
July 10, 2024



## FAIRFAX COUNTY PARK AUTHORITY POLICY MANUAL

<b>Policy 111</b>	<b>Title:</b> Remote Participation in Public Meetings	
<b>Date Approved:</b> 06/23/2021		<b>Last reviewed:</b> 07/27/2022
<b>Objective:</b> <u>Administration</u> Establish policies for the Park Authority that provide direction for the implementation of sustainable management practices in accordance with community needs.		

**Purpose:** To allow for remote participation during Park Authority Board meetings and to ensure these meetings are conducted lawfully under the Virginia Freedom of Information Act.

### Policy Statement:

#### 1. AUTHORITY AND SCOPE.

a. This policy is adopted pursuant to the authorization of Va. Code § 2.2-3708.3 and is to be strictly construed in conformance with the Virginia Freedom of Information Act (VFOIA), Va. Code §§ 2.2-3700—3715.

b. This policy shall not govern an electronic meeting conducted to address a state of emergency declared by the Governor or the Fairfax County Board of Supervisors. Any meeting conducted by electronic communication means under such circumstances shall be governed by the provisions of Va. Code § 2.2-3708.2. This policy also does not apply to an all-virtual public meeting.

c. This policy must be reviewed and readopted annually. Va. Code § 2.2-3708.3(D).

d. This policy does not prohibit or restrict any individual member of a public body who is lawfully either participating in an all-virtual meeting or who is using remote participation from voting on matters before the public body. See Va. Code § 2.2-3708.3(D).

#### 2. DEFINITIONS.

a. **"PAB"** means the FAIRFAX COUNTY PARK AUTHORITY BOARD or any committee, subcommittee, or other entity of the FAIRFAX COUNTY PARK AUTHORITY BOARD.

b. **"Member"** means any member of the FAIRFAX COUNTY PARK AUTHORITY BOARD.

## Policy 111 Remote Participation in Public Meetings (continuation)

c. **“Remote participation** means participation by a member of the PAB by electronic communication means in a public meeting where a quorum of the PAB is physically assembled, as defined by Va. Code § 2.2-3701.

d. **“Meeting**” means a meeting as defined by Va. Code § 2.2-3701.

e. **“Notify**” or **“notifies,”** for purposes of this policy, means written notice such as email or letter. Notice does not include text message or communications via social media.

f. **“Person with a disability”** means a person who has a physical or mental impairment that substantially limits one or more of his major life activities or who has a record of such impairment.

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g. **“Caregiver”** means an adult related by blood, marriage, or adoption or the legally appointed guardian of the person with a disability for whom he is caring.

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### 3. **MANDATORY REQUIREMENTS**

Regardless of the reasons why the member is participating in a meeting from a remote location by electronic communication means, the following conditions must be met for the member to participate remotely:

a. A quorum of the PAB must be physically assembled at the primary or central meeting location; ~~and~~

~~b. For purposes of determining whether a quorum is physically assembled, an individual member of a public body who is either a person with a disability or who must act as a caregiver at the time of the meeting for a person with a disability, and is thus prevented from physically attending the meeting and who thus uses remote participation, will count toward the quorum as if the individual was physically present;~~

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c. Arrangements have been made for the voice of the remotely participating member to be heard by all persons at the primary or central meeting location. If at any point during the meeting the voice of the remotely participating member is no longer able to be heard by all persons at the meeting location, the remotely participating member shall no longer be permitted to participate remotely.

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d. A statutorily conforming policy must be adopted by the Park Authority Board at least once annually.

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### 4. **PROCESS TO REQUEST REMOTE PARTICIPATION**

## Policy 111 Remote Participation in Public Meetings (continuation)

a. On or before the day of the meeting, and at any point before the meeting begins, the requesting member must notify the PAB Chair (or the Vice-Chair if the requesting member is the Chair) that they are unable to physically attend a meeting due to (i) a temporary or permanent disability or other medical condition that prevents the member's physical attendance or (ii) a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance or (iii) a personal matter and identifies with specificity the nature of the personal matter.

b. The requesting member should also notify the Executive Director of the Park Authority of their request, but their failure to do so shall not affect their ability to remotely participate.

c. If the requesting member is unable to physically attend the meeting due to a personal matter, the requesting member must state with specificity the nature of the personal matter. Remote participation due to a personal matter is limited each calendar year to two meetings or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater. There is no limit to the number of times that a member may participate remotely due to a temporary or permanent disability or other medical condition or that of a family member that requires the member to provide care.

d. The requesting member is not obligated to provide independent verification regarding the reason for their nonattendance, including the temporary or permanent disability or other medical condition or the family member's medical condition that prevents their physical attendance at the meeting.

e. For purposes of establishing a quorum of the PAB, the requesting member shall verify whether the requesting member is requesting remote participation due to his disability or need to act as caregiver for a person with a disability, pursuant to 3(b) above.

f. The Chair (or the Vice-Chair if the requesting member is the Chair) shall promptly notify the requesting member whether their request is in conformance with this policy, and therefore approved or disapproved.

### 5. **PROCESS TO CONFIRM APPROVAL OR DISAPPROVAL OF PARTICIPATION FROM A REMOTE LOCATION**

When a quorum of the PAB has assembled for the meeting, the PAB shall vote to determine whether:

- a. The Chair's (or their designee's) decision to approve or disapprove the

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## **Policy 111 Remote Participation in Public Meetings (continuation)**

requesting member's request to participate from a remote location was in conformance with this policy; and

b. The voice of the remotely participating member can be heard by all persons at the primary or central meeting location.

### **6. RECORDING IN MINUTES:**

a. If the member is allowed to participate remotely due to a temporary or permanent disability or other medical condition, or a family member's medical condition that requires the member to provide care to the family member the PAB shall record in its minutes (1) the PAB's approval of the member's remote participation; and (2) the remote location from which the member participated.

b. If the member is allowed to participate remotely due to a personal matter, such matter shall be cited in the minutes with specificity, as well as how many times the member has attended remotely due to a personal matter, and the remote location from which the member participated.

c. If a member's request to participate remotely is disapproved, the disapproval, including the grounds upon which the requested participation violates this policy or VFOIA, shall be recorded in the minutes with specificity.

### **7. CLOSED SESSION**

If the PAB goes into closed session, the member participating remotely shall ensure that no third party is able to hear or otherwise observe the closed meeting.

### **8. STRICT AND UNIFORM APPLICATION OF THIS POLICY**

This Policy shall be applied strictly and uniformly, without exception, to the entire membership, and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.

The Chair (or Vice-Chair) shall maintain the member's written request to participate remotely and the written response for a period of one year, or other such time required by records retention laws, regulations, and policies.

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### **References:**

## Policy 111 Remote Participation in Public Meetings (continuation)

1. Virginia Code § 2.2-3708.~~32~~. Meetings held through electronic communication means; ~~situations other than declared states of emergency~~  
  
[§ 2.2-3708.23. \(Effective ~~September~~ July 1, 20222024\) Meetings held through electronic communication means; situations other than ~~during~~ declared states of emergency \(virginia.gov\)](#)
2. Virginia Code Chapter 37. Virginia Freedom of Information Act  
[Code of Virginia Code - Chapter 37. Virginia Freedom of Information Act](#)

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## FAIRFAX COUNTY PARK AUTHORITY POLICY MANUAL

<b>Policy 112</b>	<b>Title:</b> All-Virtual Public Meetings
<b>Date Approved:</b> 07/27/2022	<b>Last reviewed:</b> 07/27/2022
<b>Objective: <u>Administration</u></b> Establish policies for the Park Authority that provide direction for the implementation of sustainable management practices in accordance with community needs.	

**Purpose:** To allow for participation by board members and the public during all-virtual Park Authority Board meetings and to ensure these meetings are conducted lawfully under the Virginia Freedom of Information Act.

### Policy Statement:

#### 1. **AUTHORITY AND SCOPE.**

a. This policy is adopted pursuant to the authorization of Va. Code § 2.2-3708.3 and is to be strictly construed in conformance with the Virginia Freedom of Information Act (VFOIA), Va. Code §§ 2.2-3700—3715.

b. This policy shall not govern an electronic meeting conducted to address a state of emergency declared by the Governor or the Fairfax County Board of Supervisors. Any meeting conducted by electronic communication means under such circumstances shall be governed by the provisions of Va. Code § 2.2-3708.2.

c. This policy must be reviewed and readopted annually. Va. Code § 2.2-3708.3(D).

d. This policy does not prohibit or restrict any individual member of a public body who is lawfully either participating in an all-virtual meeting or who is using remote participation from voting on matters before the public body. See Va. Code § 2.2-3708.3(D).

#### 2. **DEFINITIONS.**

a. **"PAB"** means the FAIRFAX COUNTY PARK AUTHORITY BOARD or any committee, subcommittee or other entity of the FAIRFAX COUNTY PARK AUTHORITY BOARD.

b. **"Member"** means any member of the FAIRFAX COUNTY PARK AUTHORITY BOARD.

c. **"All-virtual public meeting,"** means a public meeting conducted by the PAB

## Policy 112 All-Virtual Public Meetings (continuation)

using electronic communication means during which all members of the PAB who participate do so remotely rather than being assembled in one physical location, and to which public access is provided through electronic communication means, as defined by Va. Code § 2.2-3701.

d. **"Meeting"** means a meeting as defined by Va. Code § 2.2-3701.

e. **"Notify"** or **"notifies,"** for purposes of this policy, means written notice, including, but not limited to, email or letter, but does not include text messages or messages exchanged on social media.

### 3. WHEN AN ALL-VIRTUAL PUBLIC MEETING MAY BE AUTHORIZED

An all-virtual public meeting may be held under the following circumstances:

a. It is impracticable or unsafe to assemble a quorum of the PAB in a single location, but a state of emergency has not been declared by the Governor or Fairfax County Board of Supervisors; or

b. Other circumstances warrant the holding of an all-virtual public meeting, including, but not limited to, the convenience of an all-virtual meeting; and

c. The PAB has not had more than two all-virtual public meetings, or no more than ~~25~~ 50 percent of its meetings rounded up to the next whole number, whichever is greater, during the calendar year; and

d. The PAB's last meeting was not an all-virtual public meeting.

### 4. PROCESS TO AUTHORIZE AN ALL-VIRTUAL PUBLIC MEETING

a. The PAB may schedule its all-virtual public meetings at the same time and using the same procedures used by the PAB to set its meetings calendar for the calendar year; or

b. If the PAB wishes to have an all-virtual public meeting on a date not scheduled in advance on its meetings calendar, and an all-virtual public meeting is authorized under Section 3 above, the PAB Chair may schedule an all-virtual public meeting provided that any such meeting comports with VFOIA notice requirements.

### 5. ALL-VIRTUAL PUBLIC MEETING REQUIREMENTS

The following applies to any all-virtual public meeting of the PAB that is scheduled in

## Policy 112 All-Virtual Public Meetings (continuation)

conformance with this policy:

a. The meeting notice indicates that the public meeting will be all-virtual and the PAB will not change the method by which the PAB chooses to meet without providing a new meeting notice that comports with VFOIA;

~~a.~~  
b. Public access is provided by electronic communication means that allows the public to hear all participating members of the PAB;

c. Audio-visual technology, if available, is used to allow the public to see the members of the PAB;

d. When audio-visual technology is available, a member of the PAB shall, for purposes of a quorum, be considered absent from any portion of the meeting during which visual communication with the member is voluntarily disconnected or otherwise fails or during which audio communication involuntarily fails.

~~e.~~  
e. A phone number, email address or other live contact information is provided to the public to alert the PAB if electronic transmission of the meeting fails for the public, and if such transmission fails, the PAB takes a recess until public access is restored;

~~f.~~  
f. A copy of the proposed agenda and all agenda packets (unless exempt) are made available to the public electronically at the same time such materials are provided to the PAB;

~~g.~~  
g. The public is afforded the opportunity to comment through electronic means, including written comments, at meetings where public comment is customarily received; and

~~g-h.~~  
h. There are no more than two members of the PAB together in one physical location.

### 6. RECORDING IN MINUTES:

Minutes are taken as required by VFOIA and must include the fact that the meeting was held by electronic communication means and the type of electronic communication means used.

### 7. CLOSED SESSION

If the PAB goes into closed session, transmission of the meeting will be suspended until the public body resumes to certify the closed meeting in open session.

### 8. STRICT AND UNIFORM APPLICATION OF THIS POLICY

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## Policy 112 All-Virtual Public Meetings (continuation)

This Policy shall be applied strictly and uniformly, without exception, to the entire membership, and without regard to the matters that will be considered or voted on at the meeting.

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### References:

1. Virginia Code § 2.2-3708.~~23~~. Meetings held through electronic communication means; situations other than declared states of emergency.  
[§ 2.2-3708.3. \(Effective ~~September~~ July 1, 202~~24~~\) Meetings held through electronic communication means; situations other than declared states of emergency \(virginia.gov\)](#)
2. Virginia Code Chapter 37. Virginia Freedom of Information Act  
[Code of Virginia Code - Chapter 37. Virginia Freedom of Information Act](#)

## 2024 SESSION

### CHAPTER 610

*An Act to amend and reenact §§ 2.2-3701 and 2.2-3708.3 of the Code of Virginia, relating to the Virginia Freedom of Information Act; definition of "caregiver"; remote participation in meetings by persons with disabilities and caregivers; remote voting.*

[H 1040]

Approved April 8, 2024

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3701 and 2.2-3708.3 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3701. Definitions.

As used in this chapter, unless the context requires a different meaning:

"All-virtual public meeting" means a public meeting (i) conducted by a public body, other than those excepted pursuant to subsection C of § 2.2-3708.3, using electronic communication means, (ii) during which all members of the public body who participate do so remotely rather than being assembled in one physical location, and (iii) to which public access is provided through electronic communication means.

*"Caregiver" means an adult who provides care for a person with a disability as defined in § 51.5-40.1. A caregiver shall be either related by blood, marriage, or adoption to or the legally appointed guardian of the person with a disability for whom he is caring.*

"Closed meeting" means a meeting from which the public is excluded.

"Electronic communication" means the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

"Emergency" means an unforeseen circumstance rendering the notice required by this chapter impossible or impracticable and which circumstance requires immediate action.

"Information," as used in the exclusions established by §§ 2.2-3705.1 through 2.2-3705.7, means the content within a public record that references a specifically identified subject matter, and shall not be interpreted to require the production of information that is not embodied in a public record.

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through electronic communication means pursuant to § 2.2-3708.2 or 2.2-3708.3, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body (a) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, or (b) at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be deemed a "meeting" subject to the provisions of this chapter.

"Official public government website" means any Internet site controlled by a public body and used, among any other purposes, to post required notices and other content pursuant to this chapter on behalf of the public body.

"Open meeting" or "public meeting" means a meeting at which the public may be present.

"Public body" means any legislative body, authority, board, bureau, commission, district, or agency of the Commonwealth or of any political subdivision of the Commonwealth, including counties, cities, and towns, municipal councils, governing bodies of counties, school boards, and planning commissions; governing boards of public institutions of higher education; and other organizations, corporations, or agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established pursuant to Chapter 50 (§ **38.2-5000** et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other entity however designated of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee, or entity because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers and private police departments as defined in § **9.1-101** shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records.

"Public records" means all writings and recordings that consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording, or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees, or agents in the transaction of public business.

"Regional public body" means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, which unit includes two or more localities.

"Remote participation" means participation by an individual member of a public body by electronic communication means in a public meeting where a quorum of the public body is otherwise physically assembled.

"Scholastic records" means those records containing information directly related to a student or an applicant for admission and maintained by a public body that is an educational agency or institution or by a person acting for such agency or institution.

"Trade secret" means the same as that term is defined in the Uniform Trade Secrets Act (§ **59.1-336** et seq.).

§ **2.2-3708.3**. Meetings held through electronic communication means; situations other than declared states of emergency.

A. Public bodies are encouraged to (i) provide public access, both in person and through electronic communication means, to public meetings and (ii) provide avenues for public comment at public meetings when public comment is customarily received, which may include public comments made in person or by electronic communication means or other methods.

B. Individual members of a public body may use remote participation instead of attending a public meeting in person if, in advance of the public meeting, the public body has adopted a policy as described in subsection D and the member notifies the public body chair that:

1. The member has a temporary or permanent disability or other medical condition that prevents the member's physical attendance. *For purposes of determining whether a quorum is physically assembled, an individual member of a public body who is a person with a disability as defined in § **51.5-40.1** and uses remote participation counts toward the quorum as if the individual was physically present;*
2. A medical condition of a member of the member's family requires the member to provide care that prevents the member's physical attendance *or the member is a caregiver who must provide care for a person with a disability at the time the public meeting is being held thereby preventing the member's physical attendance. For purposes of determining whether a quorum is physically assembled, an individual member of a public body who is a caregiver for a person with a disability and uses remote participation counts toward the quorum as if the individual was physically present;*
3. The member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting; or
4. The member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter. However, the member may not use remote participation due to personal matters more than two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.

If participation by a member through electronic communication means is approved pursuant to this subsection, the public body holding the meeting shall record in its minutes the remote location from which the member participated; however, the remote location need not be open to the public and may be identified in the minutes by a general description. If participation is approved pursuant to subdivision 1 or 2, the public body shall also include in its minutes the fact that the member participated through electronic communication means due to a (i) temporary or permanent disability or other medical condition that prevented the member's physical attendance or (ii) family member's medical condition that required the member to provide care for such family member, thereby preventing the member's physical attendance. If participation is approved pursuant to subdivision 3, the public body shall also include in its minutes the fact that the member participated through electronic communication means due to the distance between the member's principal residence and the meeting location. If participation is approved pursuant to subdivision 4, the public body shall also include in its minutes the specific nature of the personal matter cited by the member.

If a member's participation from a remote location pursuant to this subsection is disapproved because such participation would violate the policy adopted pursuant to subsection D, such disapproval shall be recorded in the minutes with specificity.

C. With the exception of local governing bodies, local school boards, planning commissions, architectural review boards, zoning appeals boards, and boards with the authority to deny, revoke, or suspend a professional or occupational license, any public body may hold all-virtual public meetings, provided that the public body follows the other requirements in this chapter for meetings, the public body has adopted a policy as described in subsection D, and:

1. An indication of whether the meeting will be an in-person or all-virtual public meeting is included in the required meeting notice along with a statement notifying the public that the method by which a public body chooses to meet shall not be changed unless the public body provides a new meeting notice in accordance with the provisions of § 2.2-3707;
2. Public access to the all-virtual public meeting is provided via electronic communication means;
3. The electronic communication means used allows the public to hear all members of the public body participating in the all-virtual public meeting and, when audio-visual technology is available, to see the members of the public body as well;
4. A phone number or other live contact information is provided to alert the public body if the audio or video transmission of the meeting provided by the public body fails, the public body monitors such designated means of communication during the meeting, and the public body takes a recess until public access is restored if the transmission fails for the public;
5. A copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting is made available to the public in electronic format at the same time that such materials are provided to members of the public body;
6. The public is afforded the opportunity to comment through electronic means, including by way of written comments, at those public meetings when public comment is customarily received;
7. No more than two members of the public body are together in any one remote location unless that remote location is open to the public to physically access it;
8. If a closed session is held during an all-virtual public meeting, transmission of the meeting to the public resumes before the public body votes to certify the closed meeting as required by subsection D of § 2.2-3712;
9. The public body does not convene an all-virtual public meeting (i) more than two times per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater, or (ii) consecutively with another all-virtual public meeting; and
10. Minutes of all-virtual public meetings held by electronic communication means are taken as required by § 2.2-3707 and include the fact that the meeting was held by electronic communication means and the type of electronic communication means by which the meeting was held. If a member's participation from a remote location pursuant to this subsection is disapproved because such participation would violate the policy adopted pursuant to subsection D, such disapproval shall be recorded in the minutes with specificity.

D. Before a public body uses all-virtual public meetings as described in subsection C or allows members to use remote participation as described in subsection B, the public body shall first adopt a policy, by recorded vote at a public meeting, that

shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting. The policy shall:

1. Describe the circumstances under which an all-virtual public meeting and remote participation will be allowed and the process the public body will use for making requests to use remote participation, approving or denying such requests, and creating a record of such requests; and
2. Fix the number of times remote participation for personal matters or all-virtual public meetings can be used per calendar year, not to exceed the limitations set forth in subdivisions B 4 and C 9.

*The policy shall not prohibit or restrict any individual member of a public body who is participating in an all-virtual meeting or who is using remote participation from voting on matters before the public body.*

Any public body that creates a committee, subcommittee, or other entity however designated of the public body to perform delegated functions of the public body or to advise the public body may also adopt a policy on behalf of its committee, subcommittee, or other entity that shall apply to the committee, subcommittee, or other entity's use of individual remote participation and all-virtual public meetings.

## 2024 SESSION

### CHAPTER 56

*An Act to amend and reenact § 2.2-3708.3 of the Code of Virginia, relating to the Virginia Freedom of Information Act; electronic meetings.*

[H 894]

Approved March 8, 2024

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3708.3 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-3708.3. Meetings held through electronic communication means; situations other than declared states of emergency.

A. Public bodies are encouraged to (i) provide public access, both in person and through electronic communication means, to public meetings and (ii) provide avenues for public comment at public meetings when public comment is customarily received, which may include public comments made in person or by electronic communication means or other methods.

B. Individual members of a public body may use remote participation instead of attending a public meeting in person if, in advance of the public meeting, the public body has adopted a policy as described in subsection D and the member notifies the public body chair that:

1. The member has a temporary or permanent disability or other medical condition that prevents the member's physical attendance;
2. A medical condition of a member of the member's family requires the member to provide care that prevents the member's physical attendance;
3. The member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting; or
4. The member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter. However, the member may not use remote participation due to personal matters more than two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.

If participation by a member through electronic communication means is approved pursuant to this subsection, the public body holding the meeting shall record in its minutes the remote location from which the member participated; however, the remote location need not be open to the public and may be identified in the minutes by a general description. If participation is approved pursuant to subdivision 1 or 2, the public body shall also include in its minutes the fact that the member participated through electronic communication means due to a (i) temporary or permanent disability or other medical condition that prevented the member's physical attendance or (ii) family member's medical condition that required the member to provide care for such family member, thereby preventing the member's physical attendance. If participation is approved pursuant to subdivision 3, the public body shall also include in its minutes the fact that the member participated through electronic communication means due to the distance between the member's principal residence and the meeting location. If participation is approved pursuant to subdivision 4, the public body shall also include in its minutes the specific nature of the personal matter cited by the member.

If a member's participation from a remote location pursuant to this subsection is disapproved because such participation would violate the policy adopted pursuant to subsection D, such disapproval shall be recorded in the minutes with specificity.

C. With the exception of local governing bodies, local school boards, planning commissions, architectural review boards, zoning appeals boards, and boards with the authority to deny, revoke, or suspend a professional or occupational license, any public body may hold all-virtual public meetings, provided that the public body follows the other requirements in this chapter for meetings, the public body has adopted a policy as described in subsection D, and:

1. An indication of whether the meeting will be an in-person or all-virtual public meeting is included in the required meeting notice along with a statement notifying the public that the method by which a public body chooses to meet shall not be changed unless the public body provides a new meeting notice in accordance with the provisions of § 2.2-3707;
  2. Public access to the all-virtual public meeting is provided via electronic communication means;
  3. The electronic communication means used allows the public to hear all members of the public body participating in the all-virtual public meeting and, when audio-visual technology is available, to see the members of the public body as well. *When audio-visual technology is available, a member of a public body shall, for purposes of a quorum, be considered absent from any portion of the meeting during which visual communication with the member is voluntarily disconnected or otherwise fails or during which audio communication involuntarily fails;*
  4. A phone number or other live contact information is provided to alert the public body if the audio or video transmission of the meeting provided by the public body fails, the public body monitors such designated means of communication during the meeting, and the public body takes a recess until public access is restored if the transmission fails for the public;
  5. A copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting is made available to the public in electronic format at the same time that such materials are provided to members of the public body;
  6. The public is afforded the opportunity to comment through electronic means, including by way of written comments, at those public meetings when public comment is customarily received;
  7. No more than two members of the public body are together in any one remote location unless that remote location is open to the public to physically access it;
  8. If a closed session is held during an all-virtual public meeting, transmission of the meeting to the public resumes before the public body votes to certify the closed meeting as required by subsection D of § 2.2-3712;
  9. The public body does not convene an all-virtual public meeting (i) more than two times per calendar year or ~~25~~ 50 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater, or (ii) consecutively with another all-virtual public meeting; and
  10. Minutes of all-virtual public meetings held by electronic communication means are taken as required by § 2.2-3707 and include the fact that the meeting was held by electronic communication means and the type of electronic communication means by which the meeting was held. If a member's participation from a remote location pursuant to this subsection is disapproved because such participation would violate the policy adopted pursuant to subsection D, such disapproval shall be recorded in the minutes with specificity.
- D. Before a public body uses all-virtual public meetings as described in subsection C or allows members to use remote participation as described in subsection B, the public body shall ~~first~~ *at least once annually* adopt a policy, by recorded vote at a public meeting, that shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting. The policy shall:
1. Describe the circumstances under which an all-virtual public meeting and remote participation will be allowed and the process the public body will use for making requests to use remote participation, approving or denying such requests, and creating a record of such requests; and
  2. Fix the number of times remote participation for personal matters or all-virtual public meetings can be used per calendar year, not to exceed the limitations set forth in subdivisions B 4 and C 9.
- Any public body that creates a committee, subcommittee, or other entity however designated of the public body to perform delegated functions of the public body or to advise the public body may also adopt a policy on behalf of its committee, subcommittee, or other entity that shall apply to the committee, subcommittee, or other entity's use of individual remote participation and all-virtual public meetings.

# FCPA Policy on All-Virtual Public Meetings

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ADMINISTRATION & BOARD MANAGEMENT COMMITTEE

JULY 10, 2024



# HB 894 – Virginia Freedom of Information Act; electronic meetings

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- New legislation in effect on July 1, 2024 to allow up to 50% of the public body's meetings to be held virtually.
- When audio-visual technology is available during an all-virtual meeting, any member who voluntarily disconnects their video or involuntarily loses audio will be considered absent for the purposes of quorum. If a member is joining only via audio and is needed to meet the quorum, all members will need to be joined via audio only.
- This legislation also requires annual adoption of the policies for remote participation and all-virtual meetings.

# HB 1040 – Virginia Freedom of Information Act; definition of “caregiver”, remote participation in meetings

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- New legislation in effect on July 1, 2024 to allow flexibility to a board member who has a disability or is a caregiver to attend a public meeting virtually and also count towards the physical quorum count for that meeting.
- The board member must meet the new statutory definition of a caregiver or the board member’s medical condition must meet the legal definition of a disability in order to count towards the physical quorum requirement for remote participation.
- This legislation adds specific language to prohibit any member who is participating in an all-virtual meeting or using remote participation from being restricted from voting on matters before the board.

# Policy 111: Remote Participation in Public Meetings



The policy must be reviewed and adopted annually.



The policy does not prohibit any member who is lawfully participating remotely or in an all-virtual meeting from voting on board matters.



Added language to define “person with a disability” and “caregiver” as terms.



A member with a disability or caregiver may participate remotely and count towards the physical quorum requirement.

# Policy 112: All-Virtual Public Meetings



The policy must be reviewed and readopted annually.



The policy does not prohibit any member who is lawfully participating remotely or in an all-virtual meeting from voting on board matters.



May conduct up to 50% (or rounded up to next whole number) of calendar year meetings in the all-virtual format.



Any member shall be considered absent from any portion of the meeting, for the purposes of quorum, during which visual communication is voluntarily disconnected or if audio involuntarily fails.