



PROTOCOLS FOR CHESAPEAKE BAY COMMISSION MEETINGS HELD BY TELECONFERENCE DURING COVID-19 EMERGENCY

Background

As a public body, the meetings of the Chesapeake Bay Commission are held in accordance with the “open meeting” laws of its three members states, Maryland¹, Pennsylvania² and Virginia³. The specifics of the statutory requirements vary among the three jurisdictions and the Commission works to ensure *each* state’s provisions are met.

The public health emergency brought on by the COVID-19 outbreak has required severe limitations on face-to-face meetings and necessitated the Commission meet by teleconference. Each member state has issued recent guidance and clarification on the requirements of their open meetings laws considering the pandemic^{4,5,6} as these issues are common to all public bodies. Such emergencies could occur in the future, so these guidelines may also serve as a basis for meeting protocols should in-person Commission meetings not be possible at some future time.

Analysis of State Requirements

There exists difference in each State’s open meetings laws and how they can be complied with during the current public health emergency. A brief review of each State’s requirements is summarized here to ensure Commission compliance. Effectively, the Commission must meet the most stringent requirements of each State.

Maryland

Maryland law already provides for meeting by teleconference, so “long as the public can listen in,” so the Commission simply needs to provide public notice of the access information to the public. The Maryland COVID-19 FAQ also provides a series of “best practices” that are incorporated into the meeting protocol section below. The Maryland FAQ also details the requirements for having a closed session by teleconference, but it is not anticipated that the Commission would need to do this.

Pennsylvania

¹ [Maryland Open Meetings Act](#)

² [Pennsylvania Sunshine Act](#)

³ [Virginia Freedom of Information Act](#)

⁴ [Maryland Open Meetings Act FAQs For Meetings Held During COVID-19 Emergency](#)

⁵ [Pennsylvania The Sunshine Act and the Coronavirus \(COVID-19\)](#)

⁶ [Virginia Opinion of the Attorney General](#)

Pennsylvania law requires that public meetings should be held in public buildings with open public participation whenever possible. However, if an official emergency declaration (as in this case) prevents that from happening, a meeting via teleconference, webinar or other electronic methods that allow for two-way communication is permissible. Any agency taking that step must provide a reasonably accessible method for the public to participate and comment. That method should be clearly explained to the public in advance of and during the meeting.

It is also recommended that any agency holding such a meeting record the meeting and proactively make the recording available (preferable online) so that a full and complete record of the meeting is available to the public. The Pennsylvania requirements are incorporated into the meeting protocols.

Virginia

Virginia law specifically prohibits public bodies from meeting via electronic means except in very limited circumstances, which however, includes the duration of a declared emergency as in the present case. Additionally, Virginia law limits the decision-making of the public body during meetings conducted by electronic means to actions that address the emergency or its “anticipated effects”. The Attorney General opines that “public bodies that are unable to assemble in person because of the unique characteristics of the COVID-19 virus ... [can] make decisions that must be made immediately and where failure to do so could result in irrevocable public harm. Whether any particular action by a public body fits within that description requires a fact-specific determination...” The Attorney General goes on to say “public bodies should carefully consider whether taking a given action during a meeting held by electronic communication means is truly essential and should defer any and all decisions that can be deferred until it is once again possible to meet in person.”

The Virginia guidance also requires for allowing public access through electronic means and three-day public notice with the agenda. It is also required that the minutes of the meeting must record “the nature of the emergency, the fact that the meeting was held by electronic communications means, and the type of electronic communication means by which the meeting was held” and that all votes “taken during the meeting . . . be recorded by name in roll-call fashion and included in the minutes.”

Meeting Protocols

The following meeting protocols have been drafted to ensure the requirements of all three members states are complied with.

Pre-Meeting

Through its normal channels, the Commission will provide public notice of the date, time and access information (call-in number, Internet link) to the public to access the meeting. The notice will also include the meeting “ground rules” relevant to the public (#9 and 10, below).

Meeting

1) At the beginning of the meeting, the Chair will call the meeting to order.

- 2) The Chair will acknowledge the unusual circumstances of the meeting brought on by the emergency declarations in each State, and advise everyone that meeting protocols have been established to ensure the Commission is compliant with each State's open meeting requirements, and this protocol has been provided to each member in advance and the portions relevant to the public have been provided in the public announcement of the meeting.
- 3) The Chair reminds everyone that the meeting is being recorded, to be made available on-line.
- 4) The Chair reminds everyone that the only formal actions taken by the Commission are those that are needed immediately to ensure continuity of operations.
- 5) Given the number of members and the public, the Chair asks everyone to mute their phone, unless they are speaking.
- 6) Members will be asked to identify themselves before giving any comments.
- 7) Members are advised that all votes will be taken in formal roll-call fashion.
- 8) Members of the public are advised not to speak unless the Chair asks them to and there will be time at the end of the meeting for public comments.
- 9) The roll call will be then taken as normal.
- 10) The Chair will ask for any changes to the proposed meeting agenda. A roll-call vote will then be taken to approve the agenda.
- 11) The approval of the minutes from the prior meeting will be deferred.
- 12) The agenda will then be executed.