

MODERNIZING PUBLIC ACCESS TO GOVERNMENT DECISION-MAKING & ENSURING ROBUST PARTICIPATION

Robin Broder // Waterkeepers Chesapeake // robin@waterkeeperschesapeake.org
Patrick Fanning // Chesapeake Bay Foundation // pfanning@cbf.org
Anna Killius // James River Association // akillius@thejamesriver.org

EXECUTIVE SUMMARY

The challenge of governing during a pandemic invited useful innovations that exemplified how technology can remotely connect constituents with their state government.¹ The return to business in person does not have to mean a return to business as usual. It is imperative that the General Assembly, State Agencies, and Boards continue to provide virtual access to proceedings — retaining and improving upon opportunities for virtual testimony. Additionally, status quo board and agency policies have limited or locked out community voices in vital public processes. Reforms to these barriers would ensure meaningful inclusion and broader engagement with diverse and more representative perspectives, especially those most directly affected by government action.

CHALLENGE

The COVID-19 pandemic highlighted — both the need for and practicality of — the integration of modern communications tools in Virginia's legislative and agency-level public processes. This change, temporarily provided for through Executive Order 51² and a budget amendment,³ answered the calls of community members who have continuously raised the issue that solely in-person meetings limit access for (among others) parenting, differently-abled, low-income, aging, and working Virginians. However, these policies end with the emergency order, leaving access to modern and inclusive participation at risk.

Solely in-person meetings limit access for (among others) parenting, differently-abled, low-income, aging, and working Virginians.

Status quo board and agency policies have the effect of limiting or locking out affected community members while favoring permit applicants. Community members are often unaware of regulatory actions until late in the

administrative process, limiting their ability to effectively participate. Under existing policies community members can only address the Board if they submitted public comment during the defined public comment period. This status quo disadvantages communities even further, as latecomers to agency actions are completely locked out of the decision making process. Further, the public's comments at Board meetings are arbitrarily limited to summarizing the concerns communicated in their written comments and responses to summaries of comments the Department of Environmental Quality (DEQ) prepares for the Board, often leaving very limited time for review and to effectively respond, particularly when DEQ's summary is inadequate. Existing policies also fail to provide any opportunity for public response to new material DEQ presents at board meetings. These practices heavily limit who can participate in the process and reaffirms structural access issues that bar diverse and representative groups of Virginians from participating.

Currently, the Virginia Administrative Process Act (APA) gives agencies the duty and responsibility to come up with their own participation rules. This significant grant of latitude to the agencies themselves cuts out the opportunity for better oversight and leaves the public at risk of narrowed opportunities to participate in vital public processes.

SOLUTION

- State agencies and the General Assembly should consider how continued use of remote participation in regulatory meetings brings broader engagement with diverse and more representative perspectives. The General Assembly should continue to provide live video streams for all floor proceedings as well as all committee and subcommittee meetings. The General Assembly should also retain and improve newly created opportunities for constituents to provide written testimony in

advance of meetings and oral testimony by phone or video conference during committee and subcommittee meetings.⁴

- During the declared state of emergency, state agencies were permitted to conduct many stakeholder engagement activities, like regulatory advisory panels and technical advisory committees, by video conference without a quorum of participants physically present. Remote participation in regulatory meetings enabled broader engagement by members of the public. With the lapse of the COVID-related emergency order on July 1st, 2021, lawmakers should consider revising state statute to retain and expand opportunities for virtual participation and ensure that the robust participation seen in 2020 and 2021 does not recede.
- Public notice procedures do not reach people with poor internet services and skills or people not traditionally involved with governmental processes. Procedural constraints on commenters, particularly during board meetings, arbitrarily limit the scope and effectiveness of public comments. Additional forums targeted at a wider and more inclusive population must be used to distribute notices. Commenting forums must allow submitters to introduce new information and adequate time to respond to agency presentations. Agency public participation policies must include procedures to foster environmental justice.

POLICY RECOMMENDATIONS

Extend and codify remote options for Public Participation in legislative and agency processes.

Provide wider notice of agency actions, through media forums, contacts with community groups, and direct contacts to residents whose properties or interests are directly affected.

Remove restrictions on submittal of new information at board meetings to increase the public's ability to respond to agency comment summaries.

Amend the APA to require that public participation policies ensure meaningful involvement of disadvantaged populations and include board committees to interact with affected communities and conduct fact-finding initiatives. These policies should include a provision to (a) fund the expenses of those who serve on state committees, commissions and panels, (b) hold meetings convenient via rail and public transit, and (c) work to expand broadband access in rural areas and frontline communities.

Make permanent the Environmental Justice Office within DEQ, and authorize the promulgation of regulations to implement the Department's environmental justice policy.

Virginia's State Insect: Eastern Tiger Swallowtail Butterfly (*Papilio glaucus*) - Blue Ridge Parkway

Image credit: Michael Proechel

