

Electronic Communication Meetings Proposal

The Virginia Freedom of Information Act (FOIA) governs electronic communication meetings at § 2.2-3708 of the Code of Virginia. The provisions were originally enacted in 1989, and have remained largely unchanged to date. FOIA places more stringent requirements on electronic communication meetings than on meetings where all of the members of a public body are physically assembled, such as a heightened notice requirements and a prohibition against holding closed meetings via electronic means.

In 1999, the General Assembly established a "pilot program" for electronic communication meetings that was not codified in the Code of Virginia but instead remains in the Acts of Assembly ("the Acts"). The Acts apply do not apply to all public bodies and apply only to audio/visual electronic meetings, not teleconferences. The Acts provide less stringent requirements for these meetings than those found in FOIA. Because the Acts were established as a pilot program to be used to gather data about electronic meetings and monitor whether the lessened requirements adversely affected public access to meetings, a sunset clause was included. Currently, the Acts will expire July 1, 2005 unless further legislative action is taken.

Included below is a table outlining some of the major differences between the electronic communication meeting provisions found in FOIA and the Acts. Recommendations of the JCOTS Integrated Government Advisory Committee can be found in the last column. These recommendations involve allowing the Acts to expire, while amending FOIA to include some of the provisions currently found in the Acts. Practical experience with both FOIA and the Acts indicate that many public bodies do not take advantage of the FOIA provisions because they are difficult to implement. For example, FOIA requires 30 days notice for an electronic meeting, yet many public bodies do not know that far in advance that a teleconference may be required for a particular meeting. On the other hand, the Acts apply only if a public body holds a meeting via video means, and public bodies often lack the technological resources or financial resources to engage in these kinds of meetings. The end result is that neither the provisions in FOIA nor the Act are used frequently enough to generate adequate data to examine the effect of electronic communication meetings on public access. Furthermore, many public bodies do not realize that the relaxed provisions of the Act exist, because they are not in the Code of Virginia. This recommendation, therefore, is based on the presumption that creating one standard for electronic communication meetings that addresses some existing logistical concerns will allow more public bodies to avail themselves of such meetings. By including reporting requirements about electronic meetings to both JCOTS and the FOIA Council, we will be able to monitor the practical experiences of public bodies that will be necessary to determine if further legislative changes are indicated in the future.

The issues relating to electronic communications meetings are also currently being considered by a FOIA Council subcommittee. JCOTS staff had the opportunity to meet with the FOIA Council subcommittee to discuss each entity's pending proposal.

The FOIA Council subcommittee agreed to recommend many of the Integrated Government Advisory Committee's proposals to the FOIA Council at its December 2, 2004 meeting. Likewise, the Integrated Government proposal contains elements being advanced by the FOIA Subcommittee, such as requiring that state public bodies post notice of its meetings on the Internet and that notice of electronic meetings include a phone number that can be contacted during the meeting in case of a disruption in the audio or visual connection. The only points upon which the proposals of the FOIA Council Subcommittee and the Integrated Government Advisory Committee disagree relate to whether the law should require a physical quorum or a dispersed quorum for electronic communication meetings, and whether all remote sites of the meeting must be open to the public. These points of departure are highlighted in the matrix below.

	2.2-3708	Acts of Assembly	Proposed
Entities subject to the provisions	Any state public body	State public bodies (i) in the legislative branch or (ii) with members who reside or work more than 55 miles from the meeting location	Any state public body
Types of meetings allowed	Telephonic or audio/visual communication	Audio/visual communications only	Telephonic or audio/visual communication
Notice	30 days	7 Days	7 working days
Meeting Locations Public Access <i>*I-Gov/FOIA Council Difference</i>	A quorum must be physically assembled in one location;	Three members, or a quorum of the public body if less than three must be at locations that are (i) in Virginia and (ii) open to the public.	<u>I-Gov:</u> A quorum of the public body must be at locations that are (i) in Virginia and (ii) open to the public. <u>FOIA Subcommittee:</u> Quorum in one physical location: After the quorum is established, other members may join the meeting from locations that are not in Virginia or are not open to the public.

	2.2-3708	Acts of Assembly	Proposed
<p>Public Access to Locations</p> <p><i>*I-Gov/FOIA Council Difference</i></p>	<p>After a quorum is established, other members of the public body may meet from remote locations that are (i) in Virginia and (ii) open to the public</p>	<p>After the presence of three members or a quorum is established, other members may join the meeting from locations that are not in Virginia or are not open to the public.</p>	<p><u>I-Gov:</u> After a quorum is established, other members may join the meeting from locations that are not in Virginia or are not open to the public.</p> <p><u>FOIA Subcommittee:</u> All remote sites must be open to the public.</p>
<p>Reporting</p>	<p>Report must be filed with VITA by July 1 of each year identifying the total number of meetings held by the public body, the dates of the meetings, and the number and purpose of those meetings conducted electronically.</p>	<p>Report must be filed with JCOTS and the FOIA Council by Sept. 15 of each year identifying the total number of electronic meetings, the dates and purposes of the meetings, and for each electronic meeting indicate the number of sites, the type of electronic communications used, the number of participants, the number of remote participants, a summary of public comment about electronic meetings, and a summary of the public body's experiences with electronic meetings.</p>	<p>Report must be filed with JCOTS and the FOIA Council by Dec.15 of each year identifying the total number of electronic meetings, dates and purposes of the meetings, and the number of sites for each electronic meeting, the type of electronic communications used, the number of participants, the number of remote participants including the identity of members at the remote sites, a summary of public comment about electronic meetings, and a summary of the public body's experiences with electronic meetings.</p>

	2.2-3708	Acts of Assembly	Proposed
Recording	Public body must make an audio recording of telephonic meetings and an audio/visual recording of audio/visual meetings. The recording must be preserved for three years.	Public body must make an audio or audio/visual recording of the meeting. The recording must be preserved for three years.	No audio or audio/visual recording required. Meetings subject to regular minute requirements at § 2.2-3707. § 2.2-3707 is amended to require that minutes of electronic meetings include the identity of members participating remotely, the identity of members physically assembled at the central meeting location, and the identity of members who monitored the meeting electronically.
Closed Meetings	Prohibited	Allowed	Allowed
Limit on annual Number of electronic meetings	A public body may not hold more than 25% of its meetings annually by electronic communications means, except in the case of an emergency.	No limitation on number of electronic communications meetings.	No limitation on number of electronic communications meetings. At least one meeting annually must be held where all members of the public body are physically assembled.