

Virginia Freedom of Information Advisory Council

Electronic Meetings Subcommittee

June 28, 2012

10:30 AM

General Assembly Building

Richmond, Virginia

Meeting Summary

The Electronic Meetings Subcommittee (the Subcommittee) held its first meeting on Thursday, June 28, 2012 to consider legislation referred to the FOIA Council for study by the 2012 Session of the General Assembly.<sup>1</sup> The FOIA Council reconstituted its Electronic Meetings Subcommittee to examine HB 1105 (Greason) and HB 1149 (Dudenhefer). A summary of each bill appears below.<sup>2</sup> HB 1105 was an administration bill that was a recommendation of the Governor's Government Reform and Restructuring Commission. HB 1149 was introduced at the request of Stafford County.

Staff discussed the legislative history of § 2.2-3708 of the Freedom of Information Act (FOIA), which contains the statutory requirements for the conduct of electronic communication meetings. The legislative history of § 2.2-3708 appears as Appendix A to this meeting summary. Staff then reminded the Subcommittee of the policy statement relating to electronic meetings adopted by the FOIA Council in 2008 by a vote of six to five. This policy statement is set out below.

*The Freedom of Information Advisory Council believes that technology can expand public monitoring of and participation in the affairs of government. It also believes representative government is best served when public officials meet face-to-face in regularly scheduled public meetings.*

---

<sup>1</sup> Subcommittee Members Craig Fifer, Kathleen Dooley and John Selph were present. Subcommittee member George Whitehurst was absent.

<sup>2</sup>**HB 1105 (Greason) Freedom of Information Act; electronic communication meetings.** Revises the rules for which meetings of state public bodies may be conducted by audio or video means. The bill provides that (i) at least one member of the public body must be physically assembled at the principal meeting location, (ii) the quorum of the public body is determined by members participating in person or by electronic means in the meeting, (iii) a member of the public shall pay for the documented marginal cost that a public body may incur in expanding public participation to the meeting, and (iv) the number of meetings a public body may conduct through electronic communications means is limited to 50 percent of its regular meetings in any calendar year. The bill contains technical amendments.

**HB 1149 (Dudenhefer) Freedom of Information Act; electronic communication meetings by local and regional public bodies.** Expands the authority for the conduct of electronic communication meetings to all public bodies. Currently, local public bodies are prohibited from conducting public meetings in this manner, except when the Governor declares a state of emergency. The bill contains technical amendments.

*One of the primary responsibilities of accepting public office is the regular participation in face-to-face public meetings. The Council believes such meetings should continue to be the rule rather than the exception.*

*As technology advances, the use of electronic meetings will accelerate. As that occurs, the FOIA Council will continue to balance the preference for face-to-face meetings against the emerging technology in light of the clear policy statement of FOIA to afford citizens every opportunity to witness the operation of government, "since at all times the public is to be the beneficiary of any action taken at any level of government."*

Before discussing the bills further, the Subcommittee called for public comment. Mary Jo Fields on behalf of the Virginia Municipal League (VML) commented that with respect to HB 1149, VML is interested in citizen participation in government as elected and/or appointed officials. She noted that with a global economy, many people work some distance from where they live and this fact makes serving as a public official difficult. She suggested that technology should be used to make it possible for public officials to be both good business people and active in their community by serving in an elected or appointed capacity in local governments.

Jeff Palmore on behalf of the Governor's Office stated that HB 1105 was a 2010 recommendation of the Governor's Reform and Restructuring Commission and was an attempt to start a dialog on the use of technology by state public bodies in the conduct of public business. He noted that the charging for public participation in an electronic meeting as contained in the HB 1105 was not an essential part of the bill. When questioned about whether there is any data that shows a problem with the current law, Mr. Palmore responded that his information was merely anecdotal.

Jim Council on behalf of the Prince William County Public Schools advised that Subcommittee that the FOIA Council's policy statement was consistent with HB 1149.

Subcommittee member Craig Fifer noted that the two bills raise essentially two policy questions--retain the current physical quorum requirement for holding electronic meetings and whether electronic meetings should be permitted by local public bodies. Mr. Fifer noted that while the policy statement of the FOIA Council was adopted four years ago, nothing in the technology arena has changed, except perhaps that the technology is more reliable. He stated that face-to-face meetings are optimal and the best use of the public's money. Mr. Fifer clarified that current law encourages all public bodies to increase public participation/access to public meetings. The portion of HB 1105 relating to charging for access he felt was bizarre and would be difficult to apportion the charges. Mr. Fifer likened this provision to charging the incremental cost of cleaning the carpet for people who come to fact-to-face meetings.

Subcommittee member John Selph indicated that he was in favor of embracing technology, was unsure of the reasons why local public bodies are restricted from conducting electronic meetings, and was opposed to charging for public participation. Mr. Selph advised that he was in favor of continuing the dialog but not firm on either bill.

Subcommittee member Kathleen Dooley stated that she did not understand the basis for the charging a fee for public participation. She noted that restriction on the number of meetings found in HB 1105 was more restrictive than current law. Ms. Dooley advised that she had reviewed other states' law on point and none of them had made a distinction between state and local public bodies.

Additional public comment was requested by the Subcommittee. Sandy McNinch on behalf of the Virginia Economic Development Partnership Authority (VEDP) indicated that the problem with the physical quorum requirement for electronic meetings was with subcommittees and smaller groups of VEDP's board, especially when these meetings are short. She indicated that VEDP had no problems with full board of directors meetings.

Megan Rhyne, executive director of the Virginia Coalition for Open Government (VCOG) told the subcommittee that there is value in a quorum of a state public body being in one place. Stakeholders can identify themselves to the members of the public body and vice versa. Ms. Rhyne stated that she understands the difficulty in serving on a public body, but averred that that factor should be considered before serving. She pointed out that with legislative bodies, there are rules (not state law) in place that limit which weeks and days within those weeks that these bodies can meet. She suggested that this limitation be addressed.

Craig Merritt on behalf of the Virginia Press Association suggested that a review of the annual reports required to be submitted to the FOIA Council for state public bodies using electronic meetings may be helpful in the Subcommittee's deliberations. Mr. Fifer responded that electronic meetings are underutilized and therefore any data contained in the annual reports would be of limited utility. Mr. Fifer reiterated that he believes it is important for the Subcommittee to hear about the actual problems encountered when electronic meetings held as well as data that would explain why electronic meetings are underutilized. Ms. Dooley suggested that the available annual reports be reviewed and asked VML, the Virginia Association of Counties, and the Governor's Office for assistance in obtaining the data. All agreed and will submit information, anecdotal and otherwise, to staff. Staff suggested that those state public bodies who have filed reports be invited to the Subcommittee's next meeting to report on their experiences with electronic meetings. Staff noted that

what is required to be reported does not give the best information with which to evaluate the electronic meeting experience. Ms. Dooley commented that she is interested in knowing what the harm is in allowing local public bodies to hold electronic meetings. She questioned the justification for continuing the prohibition.

Staff will poll Subcommittee members for the next meeting, tentatively looking at the last two weeks in August. Megan Rhyne advised the Subcommittee that the Joint Commission on Technology and Science has comprised an electronic meeting subcommittee looking at the same issue, which will meet on July 16, 2012. There being no further business, the meeting was adjourned.

#



**Legislative History of § 2.2-3708  
Electronic Communications Meetings  
under FOIA**

| <b>Year</b> | <b>Chapter/Act of Assembly</b> | <b>Effect of Amendment</b>  | <b>Comment</b>  |
|-------------|--------------------------------|---|---|
| 1984        | c. 252                         | Electronic communication meetings prohibited (§ 2.1-343.1)  | Enacted as result of <i>Roanoke City School Board v. Times-World Corp.</i> , 226 VA 185, September 9, 1983. |
| 1989        | c. 538                         | State public bodies authorized to conduct two-year pilot program (expiring July 1, 1991) for electronic communication meetings in accordance with statutorily mandated procedures; such meetings for political subdivisions and local public bodies prohibited. (§ 2.1-343.1) |   |
| 1991        | c. 473                         | Two-year pilot program expanded to three-year program, expiring July 1, 1992 . (§ 2.1-343.1)  |   |

|      |            |   |   |
|------|------------|---|---|
| 1992 | c. 153     | Authorization for state public bodies to conduct electronic communication meetings made permanent (i.e., three-year sunset repealed). (§ 2.1-343.1)               |   |
| 1993 | c. 270     | Clarification of application of law (i.e., what public bodies may conduct electronic communication meetings. (§ 2.1-343.1)  |   |
| 1995 | c. 278     | Language "Nothing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation" added. (§ 2.1-343.1) |   |
| 1996 | c. 289     | Requirement for quorum physically assembled at one location added. (§ 2.1-343.1)  |   |
| 1999 | c.703/726  | Technical changes as result of 1999 rewrite of FOIA. (§ 2.1-343.1)  | Recommendation of the HJR 187/501 Joint Subcommittee Studying FOIA              |
| 2001 | c. 844     | Technical changes as result of Title 2.1 revision into Title 2.2. (§ 2.2-3708)  | No substantive changes made; renumbering of existing Code sections in Title 2.2 |
| 2003 | c. 981/102 | Technical changes as result of creation of the Virginia Information Technologies Agency (VITA). (§ 2.2-3708)  |   |
| 2005 | c. 352     | Substantive rewrite of § 2.2-3708 to relax procedural requirements  | Recommendation of FOIA Council and JCOTS  |



|      |              |   |                                |
|------|--------------|---|--------------------------------|
| 2008 | cc. 233, 789 | Allows local public bodies to meet electronically in event of Governor declared emergency w/o quorum. | Recommendation of FOIA Council |
|------|--------------|---|--------------------------------|

#

*Source: Virginia Freedom of Information Advisory Council; July 2005; revised May 2007; revised June 2008; June 2012.*