WRITTEN PUBLIC COMMENT FOR DISTRIBUTION TO THE COUNCIL

Electronic Access to Public Meetings

Official meeting notices, remote observation, and access to public records

TO	Senator Mamie E. Locke, Chair, and Members of the Council
FROM	Kelly Jeanne Hengler, Suffolk, Virginia Vice President and Public Policy Chair, Hampton Roads Preservation
SUBJECT	Consideration of technology issues identified in the HJR 96 study

Dear Chair Locke and Members of the Council:

I respectfully request that the Council consider the public accessibility of electronic meeting services and the status of technology issues identified in its study pursuant to **House Joint Resolution 96 (2014)**. The accompanying one-page **Attachment A** identifies the pertinent Council records and statutory provisions.

CURRENT PUBLIC-ACCESS CIRCUMSTANCES

Meeting notice and broadcast. The published notice for the Council's November 16, 2026, 1:00 p.m. meeting states that it will be livestreamed. Before the meeting, I was unable to identify a meeting-specific scheduled broadcast on the Virginia Senate's public YouTube listings.

Observation and public comment. Requests to speak remotely were due November 13. For a prior Council subcommittee meeting, I received a direct electronic connection after registering to speak. I could not readily determine whether an equivalent direct connection was available to members of the public seeking only to observe today's meeting.

Public correspondence. My attempted reply to the Council's November 15 FOIA-NOTICE email was rejected automatically because postings to that announcement list are restricted. I subsequently sent my inquiry to the Council's published staff email address and contacted its office by telephone.

Video-service transition. During a telephone conversation today, Senate Technology staff advised me that Senate video distribution had moved from Granicus to YouTube. I have not identified the administrative record establishing the date, notice, responsible office, or arrangements for locating prior and subsequent meeting recordings.

REQUEST FOR COUNCIL CONSIDERATION

The Council's final HJR 96 report and subsequent 2017 study materials addressed technology, posting of meeting notices and minutes, proprietary software, and access to databases. I request that the Council **(1)** identify the subsequent consideration and disposition of those subjects; **(2)** examine the public availability of meeting notices, agendas, live viewing instructions, and retained audio or video records when electronic services change; and **(3)** distinguish applicable provisions governing General Assembly meetings, other state public bodies, local public bodies, and covered procurements.

I submit these observations for factual examination and respectfully request distribution of this comment and Attachment A to Council members, with consideration of any appropriate findings or recommendations under **Code of Virginia § 30-179(7)**.

Respectfully,

Kelly Jeanne Hengler
khengler@hamptonroadspreservation.org

HJR 96 (2014) / House Document 6 (2017)

Subjects identified for continued consideration in 2017

STUDY AUTHORITY AND DISPOSITION

The Council's three-year review pursuant to **HJR 96 (2014)** concluded with its December 5, 2016 recommendation of separate records and meetings omnibus bills, each approved by a **9-0 vote**. The Council also listed matters for continued study in 2017. See [1], [4].

TECHNOLOGY MATTERS RECORDED BY THE COUNCIL

1. Review of FOIA and advancing technology. The Executive Summary included a further review of FOIA provisions in light of technological developments. [1, printed p. 6]

2. Procurement and public records. Staff proposed amending the FOIA policy statement to require that procured computer systems, equipment, or software **"shall ensure"** the production of public records. The Council agreed to study the proposal further; the proposal itself was not enacted by that discussion. [1]-[3]

3. Website posting and meetings. Continuation subjects included the website posting of meeting notices and minutes, texting among members during public meetings, and technical terms and definitions. [1, printed p. 6; 2, p. 2]

4. Software and public records. The Council identified vendor-proprietary software, software developed for public bodies, and the treatment of related records exclusions as issues for review. [1]-[2]

5. Databases and custodianship. The 2017 list addressed access to databases following the Supreme Court of Virginia's June 2017 decision in *Daily Press v. Office of the Executive Secretary*. [2, p. 2]

OPERATIVE STATUTORY DISTINCTION

Code of Virginia § 2.2-1111(B)(2) directs the Division of Purchases and Supply's procurement regulations to require consideration, **before procurement**, of whether a computer system, equipment, or software can produce materials facilitating access to official records. That statutory standard is **"shall consider"**, not the proposed FOIA-policy formulation **"shall ensure."** Applicability must be evaluated for the particular public body and procurement. See [3], [5].

Code of Virginia § 30-179(7) requires the Council to report annually to the General Assembly and Governor on FOIA activities and findings, including recommendations for changes in the law. The subsequent disposition of individual 2017 technology subjects is not established by the historic records listed here. See [6].

OFFICIAL VIRGINIA SOURCES

[1] Final HJR 96 Study Report, Executive Summary, printed p. 6
https://foiacouncil.dls.virginia.gov/HJR96%20Exec%20sum.pdf

[2] HJR 96 Study Issues Continued to 2017, Aug. 1, 2017, p. 2
https://foiacouncil.dls.virginia.gov/HJR%2096%20Issues%202017.pdf

[3] FOIA Council Meeting Summary, Nov. 21, 2016, pp. 8-9
https://foiacouncil.dls.virginia.gov/sm112116.pdf

[4] FOIA Council Meeting Summary, Dec. 5, 2016, pp. 1-2
https://foiacouncil.dls.virginia.gov/sm120516.pdf

[5] Code of Virginia, § 2.2-1111(B)(2)
https://law.lis.virginia.gov/vacode/title2.2/chapter11/section2.2-1111/

[6] Code of Virginia, § 30-179 (Council powers and duties)
https://law.lis.virginia.gov/vacode/title30/chapter21/section30-179/