



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

Year	Chapter/Act of Assembly	Effect of Amendment	Comment
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for state public bodies to conduct electronic communication meetings made permanent (i.e., three-year sunset repealed).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
2007	cc. 512, 945	<ul style="list-style-type: none"> <li>• Reduces the notice requirement for electronic communication meetings from 7 to 3 working days;</li> <li>• Clarifies that political subdivisions, other than units of local government, may conduct electronic communication meetings;</li> <li>• Allows an <i>individual</i> member of a state or local public body to participate in a meeting through electronic communication means from a remote location that is <i>not open</i> to the public in the event of an emergency, temporary or permanent disability or other medical condition, or when a member of a regional public body's principal residence is more than 60 miles from the primary meeting location.</li> <li>• For a member to participate in the above described manner, the bill requires that a quorum of the public body be physically assembled at the primary or central meeting location and that the public body make arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.</li> </ul>	<p>Recommendation of FOIA Council</p> <p>Adds § 2.2-3708.1 to FOIA</p>

		<ul style="list-style-type: none"> <li>• Adds definition of "regional public body."</li> </ul>	
2008	cc. 233, 789	Allows local public bodies to meet electronically in event of Governor declared emergency w/o quorum.	Recommendation of FOIA Council
2013	c.694	<p>The 2013 amendment by c. 694, in the first paragraph of subsection B, inserted "subsection G or H of this section or" near the beginning of the first sentence, and deleted the last sentence, which read: "State public bodies, however, may meet by electronic communication means without a quorum of the public body physically assembled at one location when (a) the Governor has declared a state of emergency in accordance with 44-146.17, (b) the meeting is necessary to take action to address the emergency, and (c) the public body otherwise complies with the provisions of this section"; in subsection F, added subdivision 3 and renumbered the remaining subdivisions accordingly, and added the last paragraph; in subsection G, substituted "public body" for "local governing body, school board, or any authority, board, bureau, commission, district, or agency of local government" near the beginning of the first sentence, deleted "local" preceding "public body" twice in the second sentence, and in the third sentence, deleted "and" following emergency" and inserted "and the type of electronic communication means by which the meeting was held"; and added subsection H.</p>	Recommendation of FOIA Council
2017	c. 616	Various changes to meetings provisions following 2014-2016 study pursuant to HJR No. 96; among other changes, eliminates the term "emergency" from the	Recommendation of FOIA Council

		provision allowing members of public bodies to participate electronically when an emergency or personal matter prevents their physical attendance; eliminates reporting to the Joint Commission on Science and Technology when a state public body convenes an electronic communication meeting.	
2018	cc. 55, 56	<p>Chapter 55 consolidates existing provisions concerning public meetings conducted by electronic communication means and makes corresponding technical changes.</p> <p>Chapter 56 removes the requirement that the remote locations from which members of a public body participate in meetings through electronic communication means be open to the public. Instead, members of the public must be provided an electronic communication means substantially equivalent to that provided to members of the public body through which the public may witness the meeting. Also provides that public access to remote locations from which members of the public body participate through electronic communication means shall be encouraged but not required; however, if three or more members are gathered at the same remote location, such remote location must be open to the public. The bill also amends the annual reporting requirements for public bodies that meet by electronic communication means.</p>	<p>Recommendation of FOIA Council</p> <p>Recommendation of FOIA Council</p>
2019	c. 359	Clarifies that certain requirements of current law regarding participation in public meetings through electronic communication means do not apply to meetings held to address a state of emergency declared by the Governor, specifically the requirements that public bodies (i) adopt a written policy regarding	Recommendation of FOIA Council

		<p>participation by electronic communication, (ii) have a quorum of a public body physically assembled at a primary or central location, and (iii) make arrangements for the voice of any member participating from a remote location to be heard by all persons at the primary or central location.</p>	
2020	c. 1289	<p>Adds a provision to the State Budget (Item 4-0.01 (g)) due to COVID-19 pandemic that allows for electronic meetings to be held without a quorum during a state of emergency declared by the Governor that differs from the similar provision in FOIA (subdivision A 3 of § 2.2-3708.2) procedurally and because the FOIA provision is limited to the purpose of addressing the emergency, whereas the Budget Item allows such meetings "to discuss or transact the business statutorily required or necessary to continue operations of the public body ... and the discharge of its lawful purposes, duties, and responsibilities." The Budget Item also addresses electronic meetings of common interest community associations, which is not addressed in FOIA.</p>	
2021	cc. 33, 490	<p>Chapter 33 authorizes a public body to conduct through electronic communication means a meeting for which, on or before the day of the meeting, a member of the public body holding the meeting notifies the chair that such member is unable to attend the meeting due to a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance. The bill also clarifies that participation in an electronic meeting by a member of a public body due to the inability to attend because of a personal matter is limited each calendar year to two</p>	<p>Recommendation of FOIA Council</p>

		<p>such meetings, which is current law, or 25 percent of the meetings held that calendar year rounded up to the next whole number, whichever is greater.</p> <p>Chapter 490 allows a public body, or a joint meeting thereof, to meet by electronic communication means without a quorum of the public body physically assembled at one location when a locality in which the public body is located has declared a local state of emergency, provided that (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to provide for the continuity of operations of the public body or the discharge of its lawful purposes, duties, and responsibilities. Under current law, public bodies may only meet in such manner when the Governor has declared a state of emergency and only for the purpose of addressing the emergency. Finally, the bill requires public bodies meeting through electronic communication means during a local or state declaration of a state of emergency to (a) make arrangements for public access to such meeting through electronic communication means, including videoconferencing if already used by the public body, and (b) provide the public with the opportunity to comment at such meetings when public comment is customarily received.</p>	<p>The FOIA Council recommended a similar but not identical draft after studying the issue in 2020.</p>

*Source: Virginia Freedom of Information Advisory Council; July 2005; revised May 2007, June 2008, June 2016, June 2021.*