



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL COMMONWEALTH OF VIRGINIA

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Electronic Meetings under the Virginia Freedom of Information Act and Coronavirus State of Emergency

The FOIA Council has received numerous inquiries regarding whether public bodies may hold meetings by electronic means without a quorum present due to concerns over spread of the coronavirus. Currently, the Virginia Freedom of Information Act (FOIA) only has one provision that allows for such electronic means without assembling a quorum of the members in a single location, subdivision A 3 of § 2.2-3708.2. That provision allows such meetings in response to a state of emergency declared by the Governor with certain limitations, including 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 address the emergency." We have been asked what topics may be discussed in such a situation, particularly as there may be a need to conduct regular business if the state of emergency lasts for any significant period of time. Our advice is that due to the statutory limitation that "the purpose of the meeting is to address the emergency," the topics that may be discussed will depend on the language of the emergency declaration, and will likely vary depending on the nature of the emergency.

In this instance, Governor Ralph S. Northam declared a state of emergency in Virginia in regard to the coronavirus on March 12, 2020, by Executive Order 51 (2020), available online at [https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/eo/EO-51-Declaration-of-a-State-of-Emergency-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/eo/EO-51-Declaration-of-a-State-of-Emergency-Due-to-Novel-Coronavirus-(COVID-19).pdf). In this order the Governor directs "state and local governments to render appropriate assistance to prepare for this event, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible," in addition to directing certain other emergency actions. Please see the full text of the emergency order.

Finally, while the other provisions for electronic meetings do require that a quorum be physically assembled, please keep in mind that they are also available to use and are not limited based on the purpose of the meeting. For general guidance on electronic meetings procedures and requirements, please see our Electronic Meetings Guide, available at <http://foiacouncil.dls.virginia.gov/ref/EMeetGuide2019.pdf>.

Statutory Reference:

§ 2.2-3708.2. Meetings held through electronic communication means.

A. The following provisions apply to all public bodies:

3. Any public body may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, 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 address the emergency. The public body convening a meeting in accordance with this subdivision shall:

a. Give public notice using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided to members of the public body conducting the meeting;

b. Make arrangements for public access to such meeting; and

c. Otherwise comply with the provisions of this section.

The nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held shall be stated in the minutes.