

**REPORT OF THE  
HOUSE SUBCOMMITTEE STUDYING**

**The Virginia Freedom  
of Information Act  
and Telecommunications**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**House Document No. 33**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1984**

## **MEMBERS OF COMMITTEE**

Delegate Ralph L. Axselle, Jr., Chairman  
Ms. Constance E. Ober, Vice-Chairman  
Delegate Warren E. Barry  
Mr. Linwood Judkins  
L. Dale McGhee, Esquire  
Mr. Paul Muse  
Delegate William T. Wilson

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**Report of the  
House Subcommittee Studying  
The Virginia Freedom of Information Act  
and Telecommunications  
To  
The Governor and the General Assembly of Virginia  
Richmond, Virginia  
January, 1984**

To: The Honorable Charles S. Robb, Governor of Virginia  
and  
The General Assembly of Virginia

**INTRODUCTION AND BACKGROUND**

The House Subcommittee Studying the Virginia Freedom of Information Act reported the findings of its 1982 study in House Document No. 19 during the 1983 Session of the General Assembly. At that time the subcommittee concluded that it would be premature to amend the Virginia Freedom of Information Act regarding teleconferencing since there was little evidence of the use of teleconferencing by public bodies for public meetings. The exception was the teleconference meeting held by the Roanoke City School Board which developed into a court case which was pending before the Supreme Court of Virginia. The subcommittee felt that the Court would resolve any conflict between the Act and telephone conference calls. The subcommittee concluded that public meetings by public bodies should not be encouraged, but stressed the adherence to the Freedom of Information Act by any public body which chooses to conduct or discuss any business of the public through a meeting. The need for teleconferencing by state agencies for administrative purposes such as interviews, training sessions and staff briefings was recognized and the subcommittee emphasized in its 1983 report that such administrative teleconferences are not public meetings and therefore not subject to the Virginia Freedom of Information Act.

**ACTIVITIES AND FINDINGS**

The subcommittee was reconstituted due to the concern of the members over the interpretation of the decision in Roanoke City School Board v. Times-World Corporation and John J. Chamberlain, 307 SE2d 256 (Virginia, 1983). The decision in that case was split four to three, with the majority holding that the School Board did not violate the Freedom of Information Act. The Court held that the teleconference held by the School Board did not constitute a "meeting" under the Freedom of Information Act since the members were not physically assembled. The Court reasoned that since there was no common-law right of the public or press to attend meetings of governmental bodies, there can be no legal or constitutional objection to a governmental body transacting business through a teleconference call in the absence of statutory prohibition. The Court concluded "that in its enactment of the Freedom of Information Act, it was not the intent of the General Assembly of Virginia that a telephone conference call between members of a public body be construed as a "meeting" of the members. If the legislature decides that such calls should be within the ambit of the Act, it will be a simple matter for the statute to be amended." Roanoke City School Board v. Times-World Corporation and John J. Chamberlain

In a strong dissent three Justices indicated that the majority decision was "wholly inconsistent with public policy declared by the General Assembly." The Virginia Freedom of Information Act provides in the policy section, § 2.1-340.1 of the Code of Virginia, that the Act ensures that citizens of the Commonwealth enjoy access to records in the custody of public officials and entry to meetings of public bodies wherein the business of the people is conducted. The section further provides that the provisions of the Act "shall be liberally construed to promote an increased awareness by all persons of government. Any exception or exemption from applicability shall be narrowly construed in order that no thing which should be public may be hidden from any person." The dissent reasons that teleconferences by public bodies without prior notice is inconsistent with the stated purpose of the Freedom of Information Act.

In response to the majority opinion reasoning that the legislature intended to exempt teleconference meetings from the Act because there is no reference to telephone conference calls in the Act, the dissent cites this subcommittee's 1983 report. In House Document No. 19, this subcommittee reported that "the Act should not be weakened by exempting conference calls from the provisions of the Act."

The subcommittee held two meetings after the Roanoke City School Board case was decided. It heard testimony from concerned citizens and special interest groups and organizations. The majority of those expressing their views did not want public bodies to conduct public meetings through teleconferencing. Although some speakers advocated the use of teleconferencing for emergency meetings, or executive or closed meetings, this approach was rejected. The subcommittee felt that the possibility of abuse would be too great.

The subcommittee agreed to sponsor legislation which would prohibit the conduction of any public meeting through telephonic, video, electronic or other communication means for the discussion or transaction of public business. The use of teleconferencing by public bodies, agencies and institutions for administrative purposes would not be affected by this legislation.

### CONCLUSION

Due to the possible interpretation of the recent decision in Roanoke City School Board v. Times-World Corporation , that public bodies could conduct public meetings through teleconferencing without being in violation of the Freedom of Information Act, the subcommittee agreed to sponsor legislation which would prohibit the use of teleconferencing by public bodies for public meetings. The subcommittee, however, supports the use of teleconferencing by public bodies, agencies and institutions for administrative purposes such as staff briefings and interviews. Administrative meetings are not public meetings and therefore, are not subject to the Virginia Freedom of Information Act. The use of teleconferencing for administrative purposes will not be affected by the proposed legislation.

Respectfully submitted,

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Delegate Ralph L. Axselle, Jr., Chairman

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Ms. Constance E. Ober, Vice-Chairman\*\*

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Delegate Warren E. Barry

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Mr. Linwood Judkins

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L. Dale McGhee, Esquire

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Mr. Paul Muse

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Delegate William T. Wilson

\*\*Constance Ober has filed the following minority report.

PROPOSED FREEDOM OF INFORMATION ACT AMENDMENTS

Constance Ober

After careful consideration of the objections to teleconferencing, I cannot support its prohibition in the conduct of state and local business.

I believe the use of teleconferencing on the local level will continue to be minimal: there is much less economic incentive, and teleconferenced meetings generally are not practical for local entities. However, there are economic incentives for statewide teleconferenced meetings and they are practical because of the distances involved.

Having planned and conducted teleconferences for state agencies, boards, and committees for more than two years, it is clear to me that the benefits of teleconferencing to the Commonwealth - with safeguards to prevent abuses - far outweigh the concerns we have heard expressed.

I would ask that my proposed amendments be included in this subcommittee's final report as the "minority opinion," if the committee allows.

The language includes a provision requiring that teleconferencing equipment be set up and operated in a publicly accessible room so that citizens can listen, watch, or even take part in teleconference meetings.

Also included is a requirement that any actual votes be taken only in open meetings where members are physically present. This would eliminate any question about identity of the participants during a teleconference.

Teleconferencing is a cost-effective and efficient tool for conducting public business in the Commonwealth. It should not be rejected because of concerns based on a lack of experience with the technology. .

PROPOSED AMENDMENTS TO THE FOI ACT

2.1 - 3.41.

(a) "Meeting" or "meetings" means the assembly, by physical presence in one location, or by means of telephone, video, electronic or other communications device, or both, as a body or entity, or as an informal assemblage of (i) as many as three members.....

2.1 - 343

The members of any public body who conduct a meeting by means of telephonic, video, electronic or other communications device shall provide for a room with equivalent communications equipment to allow reasonable access to such meeting by members of the general public.

2.1 - 344 Executive or closed meetings or meetings conducted by communications devices

(e) No resolution, ordinance, rule, contract, regulation, or motion adopted, passed or agreed to in a meeting conducted by any means other than the physical presence of the members of the public body in one location shall become effective unless such public body, following such a meeting, reconvenes in an open meeting where the members are physically present in one location accessible to the general public and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation or motion which shall have its substance reasonably identified in the meeting where all parties are physically present.

Constance Ober  
December 22, 1983

1984 SESSION

LD0816410

HOUSE BILL NO. 24

Offered January 11, 1984

Prefiled January 6, 1984

A BILL to amend and reenact §§ 2.1-341 and 2.1-346.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.1-343.1, the amended and added sections prohibiting the use of telephonic, video, electronic or other communication means under the Virginia Freedom of Information Act.

Patrons—Axselle, Thomas, Wilson, Woodrum, and Cranwell

Referred to the Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-341 and 2.1-346.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.1-343.1 as follows:

§ 2.1-341. Definitions.—The following terms, whenever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning clearly appears from the context:

(a) "Meeting" or "meetings" means the meetings, when sitting as a body or entity, or as an informal assemblage of (i) as many as three members, or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties; municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of State state institutions of higher education; and other organizations, corporations or agencies in the Commonwealth, supported wholly or principally by public funds. The notice provisions of this chapter shall not apply to the said informal meetings or gatherings of the members of the General Assembly. Nothing in this chapter shall be construed to make unlawful the gathering or attendance of two or more members of a body or entity at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the body or entity.

No meeting shall be conducted through telephonic, video, electronic or other communication means where the parties are not physically assembled to discuss or transact public business.

(b) "Official records" means all written or printed books, papers, letters, documents, maps and tapes, photographs, films, sound recordings, reports or other material, regardless of physical form or characteristics, prepared, owned, or in the possession of a public body or any employee or officer of a public body in the transaction of public business.

(c) "Executive meeting" or "closed meeting" means a meeting from which the public is excluded.

(d) "Open meeting" or "public meeting" means a meeting at which the public may be

1 present.

2 (e) "Public body" ~~shall mean~~ means any of the groups, agencies or organizations  
3 enumerated in ~~subsection~~ paragraph (a) of this section.

4 (f) "Scholastic records" means those records, files, documents, and other materials  
5 containing information about a student and maintained by a public body which is an  
6 educational agency or institution or by a person acting for such agency or institution, but,  
7 for the purpose of access by a student, does not include (i) financial records of a parent  
8 or guardian nor (ii) records of instructional, supervisory, and administrative personnel and  
9 educational personnel ancillary thereto, which are in the sole possession of the maker  
10 thereof and which are not accessible or revealed to any other person except a substitute.

11 § 2.1-343.1. *Electronic communication meetings prohibited.*—It is a violation of this Act  
12 for any public body to conduct a meeting wherein the public business is discussed or  
13 transacted through telephonic, video, electronic or other communication means where the  
14 parties are not physically assembled.

15 § 2.1-346.1. *Violations and penalties.*—In a proceeding commenced against members of  
16 public bodies under § 2.1-346 for a violation of §§ 2.1-342, 2.1-343 , 2.1-343.1 or 2.1-344, the  
17 court, if it finds that a violation was willfully and knowingly made, shall impose upon such  
18 person or persons in his or her individual capacity, whether a writ of mandamus or  
19 injunctive relief is awarded or not, a civil penalty of not less than twenty-five dollars nor  
20 more than ~~five hundred dollars~~ \$500 , which amount shall be paid into the State Literary  
21 Fund.

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<b>Official Use By Clerks</b>	
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<b>The House of Delegates</b>	
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