

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact § 2.2-3708.2 of the Code of Virginia, relating to the Virginia Freedom of
2 Information Act; meetings held by electronic communication means during a state of emergency.

3 **Be it enacted by the General Assembly of Virginia:**

4 **1. That § 2.2-3708.2 of the Code of Virginia is amended and reenacted as follows:**

5 **§ 2.2-3708.2. Meetings held through electronic communication means.**

6 A. The following provisions apply to all public bodies:

7 1. Subject to the requirements of subsection C, all public bodies may conduct any meeting wherein
8 the public business is discussed or transacted through electronic communication means if, on or before
9 the day of a meeting, a member of the public body holding the meeting notifies the chair of the public
10 body that:

11 a. Such member is unable to attend the meeting due to a temporary or permanent disability or other
12 medical condition that prevents the member's physical attendance; or

13 b. Such member is unable to attend the meeting due to a personal matter and identifies with
14 specificity the nature of the personal matter. Participation by a member pursuant to this subdivision is
15 limited each calendar year to two meetings.

16 2. If participation by a member through electronic communication means is approved pursuant to
17 subdivision 1, the public body holding the meeting shall record in its minutes the remote location from
18 which the member participated; however, the remote location need not be open to the public. If
19 participation is approved pursuant to subdivision 1 a, the public body shall also include in its minutes the
20 fact that the member participated through electronic communication means due to a temporary or
21 permanent disability or other medical condition that prevented the member's physical attendance. If
22 participation is approved pursuant to subdivision 1 b, the public body shall also include in its minutes the
23 specific nature of the personal matter cited by the member.

24 If a member's participation from a remote location pursuant to subdivision 1 b is disapproved
25 because such participation would violate the policy adopted pursuant to subsection C, such disapproval
26 shall be recorded in the minutes with specificity.

27 3. Any public body, or any joint meetings thereof, may meet by electronic communication means
28 without a quorum of the public body physically assembled at one location when the Governor has declared
29 a state of emergency in accordance with § 44-146.17 or the locality in which the public body is located
30 has declared a local state of emergency pursuant to §44.146.21, provided that ~~(i)~~ the catastrophic nature
31 of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location ~~and~~
32 ~~(ii) the purpose of the meeting is to address the emergency~~. The public body convening a meeting in
33 accordance with this subdivision shall:

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

37 b. Make arrangements for public access to such meeting through electronic means, including
38 videoconferencing if already used by the public body; ~~and~~

39 c. Provide the public with the opportunity to comment at those meetings of the public body when
40 public comment is customarily received; ~~and~~

41 d. Otherwise comply with the provisions of this ~~section~~ chapter.

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

45 B. The following provisions apply to regional public bodies:

46 1. Subject to the requirements in subsection C, regional public bodies may also conduct any
47 meeting wherein the public business is discussed or transacted through electronic communication means
48 if, on the day of a meeting, a member of a regional public body notifies the chair of the public body that
49 such member's principal residence is more than 60 miles from the meeting location identified in the
50 required notice for such meeting.

51 2. If participation by a member through electronic communication means is approved pursuant to
52 this subsection, the public body holding the meeting shall record in its minutes the remote location from
53 which the member participated; however, the remote location need not be open to the public.

54 If a member's participation from a remote location is disapproved because such participation would
55 violate the policy adopted pursuant to subsection C, such disapproval shall be recorded in the minutes
56 with specificity.

57 C. Participation by a member of a public body in a meeting through electronic communication
58 means pursuant to subdivisions A 1 and 2 and subsection B shall be authorized only if the following
59 conditions are met:

60 1. The public body has adopted a written policy allowing for and governing participation of its
61 members by electronic communication means, including an approval process for such participation,
62 subject to the express limitations imposed by this section. Once adopted, the policy shall be applied strictly
63 and uniformly, without exception, to the entire membership and without regard to the identity of the
64 member requesting remote participation or the matters that will be considered or voted on at the meeting;

65 2. A quorum of the public body is physically assembled at one primary or central meeting location;
66 and

67 3. The public body makes arrangements for the voice of the remote participant to be heard by all
68 persons at the primary or central meeting location.

69 D. The following provisions apply to state public bodies:

70 1. Except as provided in subsection D of § 2.2-3707.01, state public bodies may also conduct any
71 meeting wherein the public business is discussed or transacted through electronic communication means,
72 provided that (i) a quorum of the public body is physically assembled at one primary or central meeting
73 location, (ii) notice of the meeting has been given in accordance with subdivision 2, and (iii) members of
74 the public are provided a substantially equivalent electronic communication means through which to
75 witness the meeting. For the purposes of this subsection, "witness" means observe or listen.

76 If a state public body holds a meeting through electronic communication means pursuant to this
77 subsection, it shall also hold at least one meeting annually where members in attendance at the meeting

78 are physically assembled at one location and where no members participate by electronic communication
79 means.

80 2. Notice of any regular meeting held pursuant to this subsection shall be provided at least three
81 working days in advance of the date scheduled for the meeting. Notice, reasonable under the circumstance,
82 of special, emergency, or continued meetings held pursuant to this section shall be given
83 contemporaneously with the notice provided to members of the public body conducting the meeting. For
84 the purposes of this subsection, "continued meeting" means a meeting that is continued to address an
85 emergency or to conclude the agenda of a meeting for which proper notice was given.

86 The notice shall include the date, time, place, and purpose for the meeting; shall identify the
87 primary or central meeting location and any remote locations that are open to the public pursuant to
88 subdivision 4; shall include notice as to the electronic communication means by which members of the
89 public may witness the meeting; and shall include a telephone number that may be used to notify the
90 primary or central meeting location of any interruption in the telephonic or video broadcast of the meeting.
91 Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action
92 at the meeting until repairs are made and public access is restored.

93 3. A copy of the proposed agenda and agenda packets and, unless exempt, all materials that will
94 be distributed to members of a public body for a meeting shall be made available for public inspection at
95 the same time such documents are furnished to the members of the public body conducting the meeting.

96 4. Public access to the remote locations from which additional members of the public body
97 participate through electronic communication means shall be encouraged but not required. However, if
98 three or more members are gathered at the same remote location, then such remote location shall be open
99 to the public.

100 5. If access to remote locations is afforded, (i) all persons attending the meeting at any of the
101 remote locations shall be afforded the same opportunity to address the public body as persons attending
102 at the primary or central location and (ii) a copy of the proposed agenda and agenda packets and, unless
103 exempt, all materials that will be distributed to members of the public body for the meeting shall be made

104 available for inspection by members of the public attending the meeting at any of the remote locations at
105 the time of the meeting.

106 6. The public body shall make available to the public at any meeting conducted in accordance with
107 this subsection a public comment form prepared by the Virginia Freedom of Information Advisory
108 Council in accordance with § 30-179.

109 7. Minutes of all meetings held by electronic communication means shall be recorded as required
110 by § 2.2-3707. Votes taken during any meeting conducted through electronic communication means shall
111 be recorded by name in roll-call fashion and included in the minutes. For emergency meetings held by
112 electronic communication means, the nature of the emergency shall be stated in the minutes.

113 8. Any authorized state public body that meets by electronic communication means pursuant to
114 this subsection shall make a written report of the following to the Virginia Freedom of Information
115 Advisory Council by December 15 of each year:

116 a. The total number of meetings held that year in which there was participation through electronic
117 communication means;

118 b. The dates and purposes of each such meeting;

119 c. A copy of the agenda for each such meeting;

120 d. The primary or central meeting location of each such meeting;

121 e. The types of electronic communication means by which each meeting was held;

122 f. If possible, the number of members of the public who witnessed each meeting through electronic
123 communication means;

124 g. The identity of the members of the public body recorded as present at each meeting, and whether
125 each member was present at the primary or central meeting location or participated through electronic
126 communication means;

127 h. The identity of any members of the public body who were recorded as absent at each meeting
128 and any members who were recorded as absent at a meeting but who monitored the meeting through
129 electronic communication means;

130 i. If members of the public were granted access to a remote location from which a member
131 participated in a meeting through electronic communication means, the number of members of the public
132 at each such remote location;

133 j. A summary of any public comment received about the process of conducting a meeting through
134 electronic communication means; and

135 k. A written summary of the public body's experience conducting meetings through electronic
136 communication means, including its logistical and technical experience.

137 E. Nothing in this section shall be construed to prohibit the use of interactive audio or video means
138 to expand public participation.

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