

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3708, 2.2-3708.1, and 30-179 of the Code of Virginia, relating to
2 the Freedom of Information Act; meetings held by electronic communication means.

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

4 **1. That §§ 2.2-3708, 2.2-3708.1, and 30-179 of the Code of Virginia are amended and reenacted as**
5 **follows:**

6 **§ 2.2-3708. Electronic communication meetings; applicability; physical quorum required;**
7 **exceptions; notice; report.**

8 A. Except as expressly provided in subsection ~~G of this section~~ H or § 2.2-3708.1, no local
9 governing body, school board, or ~~any~~ authority, board, bureau, commission, district, or agency of local
10 government, ~~any or~~ committee thereof, ~~or any and no~~ entity created by a local governing body, school
11 board, or ~~any~~ local authority, board, or commission shall conduct a meeting wherein the public business
12 is discussed or transacted through telephonic, video, electronic, or other communication means where the
13 members are not physically assembled. Nothing in this section shall be construed to prohibit the use of
14 interactive audio or video means to expand public participation.

15 B. Except as provided in subsection ~~G or~~ H of this section or subsection D of § 2.2-3707.01, state
16 public bodies may conduct any meeting wherein the public business is discussed or transacted through
17 electronic communication means, provided that (i) a quorum of the public body is physically assembled
18 at one primary or central meeting location, (ii) notice of the meeting has been given in accordance with
19 subsection C, and (iii) ~~the remote locations, from which additional members of the public body participate~~
20 ~~through electronic communication means, are open to the public. All persons attending the meeting at any~~
21 ~~of the meeting locations shall be afforded the same opportunity to address the public body as persons~~
22 ~~attending the primary or central location~~ members of the public are provided a substantially equivalent
23 electronic communication means through which to witness the meeting. For the purposes of this
24 subsection, "witness" means observe or listen.

25 If an authorized public body holds ~~an electronic~~ a meeting by electronic communication means
26 pursuant to this section, it shall also hold at least one meeting annually where members in attendance at
27 the meeting are physically assembled at one location and where no members participate by electronic
28 communication means.

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

35 The notice shall include the date, time, place, and purpose for the meeting; shall identify the
36 ~~locations for the meeting~~ primary or central meeting location and any remote locations that are open to
37 the public pursuant to subsection E; and shall include notice as to the electronic communication means by
38 which members of the public may witness the meeting; and shall include a telephone number that may be
39 used ~~at remote locations~~ to notify the primary or central meeting location of any interruption in the
40 telephonic or video broadcast of the meeting ~~to the remote locations~~. Any interruption in the telephonic
41 or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are
42 made and public access is restored.

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

46 E. Public access to the remote locations from which additional members of the public body
47 participate through electronic communication means shall be encouraged but not required. However, if
48 three or more members are gathered at the same remote location, then such remote location shall be open
49 to the public.

50 If access to remote locations is afforded, (i) all persons attending the meeting at any of the remote
51 locations shall be afforded the same opportunity to address the public body as persons attending at the

52 primary or central location and (ii) a copy of the proposed agenda and agenda packets and, unless exempt,
53 all materials that will be distributed to members of the public body ~~and that have been made available to~~
54 ~~the staff of the public body in sufficient time for duplication and forwarding to all locations where public~~
55 ~~access will be provided for the meeting~~ shall be made available ~~to~~ for inspection by members of the public
56 attending the meeting at any of the remote locations at the time of the meeting.

57 F. Minutes of all meetings held by electronic communication means shall be recorded as required
58 by § 2.2-3707. Votes taken during any meeting conducted through electronic communication means shall
59 be recorded by name in roll-call fashion and included in the minutes.

60 E.G. Three working days' notice shall not be required for meetings authorized under this section
61 held in accordance with subsection ~~G.I.~~ Public bodies conducting emergency meetings through electronic
62 communication means shall comply with the provisions of subsection ~~D.F~~ requiring minutes of the
63 meeting. The nature of the emergency shall be stated in the minutes.

64 F.H. Any authorized public body that meets by electronic communication means shall make a
65 written report of the following to the Virginia Freedom of Information Advisory Council by December 15
66 of each year:

- 67 1. The total number of ~~electronic communication~~ meetings held that year in which members
68 participated by electronic communication means;
- 69 2. The dates and purposes of ~~the meetings~~ each such meeting;
- 70 3. A copy of the agenda for ~~the~~ each such meeting;
- 71 4. The ~~number of sites for~~ primary or central meeting location of each such meeting;
- 72 5. The types of electronic communication means by which ~~the meetings were~~ each meeting was
73 held;
- 74 6. ~~The~~ If possible, the number of ~~participants, including~~ members of the public, ~~at who witnessed~~
75 each meeting ~~location~~ through electronic communication means;
- 76 7. The identity of the members of the public body recorded ~~as absent and those recorded~~ as present
77 at each meeting, and whether each member was present at the primary or central meeting location or
78 participated through electronic communication means;

79 8. The identity of any members of the public body who were recorded as absent at each meeting
80 and any members who were recorded as absent at a meeting but who monitored the meeting through
81 electronic communication means;

82 9. If members of the public were granted access to a remote location from which a member
83 participated in a meeting through electronic communication means, the number of members of the public
84 at each such remote location;

85 10. A summary of any public comment received about the process of conducting a meeting by
86 electronic communication-meetings means; and

87 ~~9-11.~~ A written summary of the public body's experience using electronic communication means
88 for its meetings, including its logistical and technical experience.

89 In addition, any authorized public body shall make available to the public at any meeting conducted
90 in accordance with this section a public comment form prepared by the Virginia Freedom of Information
91 Advisory Council in accordance with § 30-179.

92 ~~G-I.~~ Any public body may meet by electronic communication means without a quorum of the
93 public body physically assembled at one location when the Governor has declared a state of emergency
94 in accordance with § 44-146.17, provided that (i) the catastrophic nature of the declared emergency makes
95 it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is
96 to address the emergency. The public body convening a meeting in accordance with this subsection shall
97 (a) give public notice using the best available method given the nature of the emergency, which notice
98 shall be given contemporaneously with the notice provided members of the public body conducting the
99 meeting; (b) make arrangements for public access to such meeting; and (c) otherwise comply with the
100 provisions of this section. The nature of the emergency, the fact that the meeting was held by electronic
101 communication means, and the type of electronic communication means by which the meeting was held
102 shall be stated in the minutes.

103 **§ 2.2-3708.1. Participation in meetings due to personal matter; certain disabilities; distance**
104 **from meeting location for certain public bodies.**

105 A. A member of a public body may participate through electronic communication means in a
106 meeting governed by this chapter ~~through electronic communication means from a remote location that is~~
107 ~~not open to the public~~ only as provided in § 2.2-3708 or as follows and subject to the requirements of
108 subsection B:

109 1. If, on or before the day of a meeting, a member of the public body holding the meeting notifies
110 the chair of the public body that such member is unable to attend the meeting due to a personal matter and
111 identifies with specificity the nature of the personal matter, and the public body holding the meeting
112 records in its minutes the specific nature of the personal matter and the remote location from which the
113 member participated. If a member's participation from a remote location is disapproved because such
114 participation would violate the policy adopted pursuant to subsection B, such disapproval shall be recorded
115 in the minutes with specificity.

116 Such participation by the member shall be limited each calendar year to two meetings;

117 2. If a member of a public body notifies the chair of the public body that such member is unable
118 to attend a meeting due to a temporary or permanent disability or other medical condition that prevents
119 the member's physical attendance and the public body records this fact and the remote location from which
120 the member participated in its minutes; or

121 3. If, on the day of a meeting, a member of a regional public body notifies the chair of the public
122 body that such member's principal residence is more than 60 miles from the meeting location identified in
123 the required notice for such meeting and the public body holding the meeting records in its minutes the
124 remote location from which the member participated. If a member's participation from a remote location
125 is disapproved because such participation would violate the policy adopted pursuant to subsection B, such
126 disapproval shall be recorded in the minutes with specificity.

127 B. Participation in a meeting through electronic communication means by a member of a public
128 body ~~as authorized under~~ pursuant to subsection A shall be authorized only ~~under if~~ the following
129 conditions are met:

130 1. The public body has adopted a written policy allowing for and governing participation of its
131 members by electronic communication means, including an approval process for such participation,

132 subject to the express limitations imposed by this section. Once adopted, the policy shall be applied strictly
133 and uniformly, without exception, to the entire membership and without regard to the identity of the
134 member requesting remote participation or the matters that will be considered or voted on at the meeting;

135 2. A quorum of the public body is physically assembled at the primary or central meeting location;
136 and

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

139 **§ 30-179. Powers and duties of the Council.**

140 The Council shall:

141 1. Furnish, upon request, advisory opinions or guidelines, and other appropriate information
142 regarding the Freedom of Information Act (§ 2.2-3700 et seq.) to any person or agency of state or local
143 government, in an expeditious manner;

144 2. Conduct training seminars and educational programs for the members and staff of public bodies
145 and other interested persons on the requirements of the Freedom of Information Act (§ 2.2-3700 et seq.);

146 3. Publish such educational materials as it deems appropriate on the provisions of the Freedom of
147 Information Act (§ 2.2-3700 et seq.);

148 4. Request from any agency of state or local government such assistance, services and information
149 as will enable the Council to effectively carry out its responsibilities. Information provided to the Council
150 by an agency of state or local government shall not be released to any other party unless authorized by
151 such agency;

152 5. Assist in the development and implementation of the provisions of § 2.2-3704.1;

153 6. Develop the public comment form for use by designated public bodies in accordance with
154 subsection ~~F~~H of § 2.2-3708;

155 7. Develop an online public comment form to be posted on the Council's official public
156 government website to enable any requester to comment on the quality of assistance provided to the
157 requester by a public body; and

