

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.

24 If an authorized public body holds ~~an electronic a~~ meeting by electronic communication means
25 pursuant to this section, it shall also hold at least one meeting annually where members in attendance at

26 the meeting are physically assembled at one location and where no members participate by electronic
27 communication means.

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

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

41 D. A ~~copy of the proposed agenda and agenda packets and, unless exempt, all materials that will~~
42 ~~be distributed to members of a public body for a meeting shall be made available for public inspection at~~
43 ~~the same time such documents are furnished to the members of the public body conducting the meeting.~~
44 ~~Public access to the remote locations from which additional members of the public body participate~~
45 ~~through electronic communication means shall be encouraged but not required. If access to such remote~~
46 ~~locations is afforded, (i) all persons attending the meeting at any of the remote locations shall be afforded~~
47 ~~the same opportunity to address the public body as persons attending at the primary or central location~~
48 ~~and (ii) a copy of the proposed agenda and agenda packets and, unless exempt, all materials that will be~~
49 distributed to members of the public body and that have been made available to the staff of the public
50 body in sufficient time for duplication and forwarding to all locations where public access will be provided
51 shall be made available to the public at the time of the meeting.

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

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

59 F-G. Any authorized public body that meets by electronic communication means shall make a
60 written report of the following to the Virginia Freedom of Information Advisory Council by December 15
61 of each year:

62 1. The total number of ~~electronic communication~~ meetings held that year in which there was
63 participation through electronic communication means;

64 2. The dates and purposes of ~~the meetings~~ each such meeting;

65 3. A copy of the agenda for ~~the~~ each such meeting;

66 4. The ~~number of sites for~~ primary or central meeting location of each such meeting;

67 5. The types of electronic communication means by which ~~the meetings were~~ each meeting was
68 held;

69 6. ~~The~~ If possible, the number of ~~participants, including~~ members of the public, ~~at who witnessed~~
70 each meeting ~~location~~ through electronic communication means;

71 7. The identity of the members of the public body recorded as absent and those recorded as present
72 ~~at each meeting, and whether each member was present at the primary or central~~ meeting location ~~or~~
73 participated through electronic communication means;

74 8. ~~The~~ identity of any members of the public body who were recorded as absent at a meeting but
75 who monitored the meeting through electronic communication means;

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

79 10. A summary of any public comment received about the process of conducting a meeting by
80 electronic communication ~~meetings means~~; and

81 ~~9-11.~~ A written summary of the public body's experience using electronic communication means
82 for its meetings, including its logistical and technical experience.

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

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

97 **§ 2.2-3708.1. Participation in meetings due to personal matter; certain disabilities; distance**
98 **from meeting location for certain public bodies.**

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

103 1. If, on or before the day of a meeting, a member of the public body holding the meeting notifies
104 the chair of the public body that such member is unable to attend the meeting due to a personal matter and
105 identifies with specificity the nature of the personal matter, and the public body holding the meeting

106 records in its minutes the specific nature of the personal matter and the remote location from which the
107 member participated. If a member's participation from a remote location is disapproved because such
108 participation would violate the policy adopted pursuant to subsection B, such disapproval shall be recorded
109 in the minutes with specificity.

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

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

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

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

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

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

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

