

Distinctions Made in FOIA Concerning Public Meetings and Electronic Communications (§§ 2.2-3708 and 2.2-3708.1)

Overview:

Type of Public Body:

- local
- regional
- state

Reason for member to participate using electronic communication means:

- any (state bodies under § 2.2-3708)
- personal matter (any public body)
- medical (any public body)
- Governor-declared emergency (any public body),
- distance (regional body only)

Requirements in advance of meeting:

- heightened notice (state bodies under § 2.2-3708)
- body must adopt a policy (personal matter, medical, or distance)

Requirements during meeting:

- various heightened procedural requirements (state bodies under § 2.2-3708)
- quorum must be present (all except Governor-declared emergency)
- voice of member calling in be heard at main location (personal matter, medical, or distance)

Requirements after meeting:

- include details in minutes (requirements vary depending on reason for using electronic communication)
- report to FOIA Council (state bodies and Governor-declared emergencies under § 2.2-3708)

Detailed description:

	State	Regional	All
Reason Member Calling In	<ul style="list-style-type: none"> • State of emergency • Any other reason 	<ul style="list-style-type: none"> • The member's principal residence is more than 60 miles from the meeting location. 	<ul style="list-style-type: none"> • The member is unable to attend due to a personal matter. [LIMITED TO TWO PER YEAR] • The member is unable to attend due to a temporary or permanent disability or other medical condition that prevents the member's physical attendance.
Preliminary Requirements	<ul style="list-style-type: none"> • State of emergency: <ul style="list-style-type: none"> ○ May meet by electronic communication means without a quorum of the public body physically assembled at one location. ○ Prerequisites: <ul style="list-style-type: none"> ▪ The catastrophic nature of the declared emergency must make it impractical or unsafe to assemble a quorum in a single location; and ▪ The purpose of the meeting must be to address the emergency. ○ Notice: <ul style="list-style-type: none"> ▪ Notice must be provided 	<ul style="list-style-type: none"> • The public body must first have adopted a written policy allowing for and governing participation of its members by electronic communication means, including an approval process for such participation, subject to the express limitations imposed by § 2.2-3708.1. • A quorum of the public body must be physically assembled 	<ul style="list-style-type: none"> • For personal matter, member must identify with specificity the nature of the personal matter. • The public body must first have adopted a written policy allowing for and governing participation of its members by electronic communication means, including an approval process for such participation, subject to the express limitations imposed by § 2.2-3708.1. • A quorum of the public body must be physically assembled at the primary

	State	Regional	All
	<p>using the best available method given the nature of the emergency.</p> <ul style="list-style-type: none"> ▪ The notice shall be given contemporaneously with the notice provided members of the public body conducting the meeting. ○ The public body must make arrangements for public access to such meeting. ○ The public body must otherwise comply with the requirements of § 2.2-3708. • Any other reason: <ul style="list-style-type: none"> ○ Prerequisites: <ul style="list-style-type: none"> ▪ A quorum of the public body must be physically assembled at one primary or central meeting location; ▪ The required notice has been given; and ▪ The remote locations, from which additional members of the public body participate in electronic communication meetings, are open to the public. ○ If a state public body holds a meeting pursuant to this section, it 	<p>at the primary or central meeting location.</p> <ul style="list-style-type: none"> • The public body must make arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location. 	<p>or central meeting location.</p> <ul style="list-style-type: none"> • The public body must make arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.

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	<p>must also hold at least one meeting annually where members in attendance at the meeting are physically assembled at one location and where no members participate by electronic communication means.</p> <ul style="list-style-type: none"> ○ Notice: <ul style="list-style-type: none"> ▪ Timing - Regular meetings = at least three working days in advance; Special, emergency, or continued meetings = must be reasonable under the circumstance and must be given contemporaneously with the notice provided to the members of the public body. ▪ The notice shall state the date, time, and purpose of the meeting; shall identify the locations for the meeting; and shall include a telephone number that may be used at remote locations to notify the primary or central meeting location of any interruption in the telephonic or video broadcast of the meeting to the remote locations. 		

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During-Meeting Requirements	<ul style="list-style-type: none"> • Any other reason: <ul style="list-style-type: none"> ○ All persons attending the meeting at any of the meeting locations shall be afforded the same opportunity to address the public body as persons attending at the primary or central meeting location. ○ The public body shall make available to the public a public comment form prepared by the FOIA Council. ○ A copy of the agenda, agenda packets, and non-exempt materials must be made available to the public at all meeting locations. ○ Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored. ○ Votes taken must be recorded by name in roll-call fashion. 		
Post-Meeting Requirements	<ul style="list-style-type: none"> • State of emergency: <ul style="list-style-type: none"> ○ Minutes: <ul style="list-style-type: none"> ▪ The nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication 	<ul style="list-style-type: none"> • Minutes: <ul style="list-style-type: none"> ○ The public body must record in its minutes the remote location from which the 	<ul style="list-style-type: none"> • Minutes: <ul style="list-style-type: none"> ○ Personal Matter - The public body must record in its minutes the specific nature of the personal matter and the remote

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	<p>means by which the meeting was held must be stated in the minutes.</p> <ul style="list-style-type: none"> • Any other reason: <ul style="list-style-type: none"> ○ Minutes: <ul style="list-style-type: none"> ▪ Required to be recorded, even for emergency meetings (nature of the emergency must be stated in the minutes). ▪ Votes taken must be recorded by name. ○ Annual report requirement. 	<p>member participated. [If disapproved, the public shall record such disapproval in the minutes with specificity.]</p>	<p>location from which the member participated. [If disapproved, the public shall record such disapproval in the minutes with specificity.]</p> <ul style="list-style-type: none"> ○ Medical - The public body must record in its minutes the fact that a member participated through electronic communication means due to a temporary or permanent disability or other medical condition that prevents the member's physical attendance and the remote location from which the member participated.

