

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact § 2.2-3708.3 of the Code of Virginia, relating to the Virginia Freedom of
2 Information Act; remote participation in meetings by members of public bodies with disabilities;
3 voting when participating by electronic communication means.

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

5 **1. That § 2.2-3708.3 of the Code of Virginia is amended and reenacted as follows:**

6 **§ 2.2-3708.3. Meetings held through electronic communication means; situations other than**
7 **declared states of emergency.**

8 A. Public bodies are encouraged to (i) provide public access, both in person and through electronic
9 communication means, to public meetings and (ii) provide avenues for public comment at public meetings
10 when public comment is customarily received, which may include public comments made in person or by
11 electronic communication means or other methods.

12 B. Individual members of a public body may use remote participation instead of attending a public
13 meeting in person if, in advance of the public meeting, the public body has adopted a policy as described
14 in subsection D and the member notifies the public body chair that:

15 1. The member has a temporary or permanent disability or other medical condition that prevents
16 the member's physical attendance. For purposes of determining whether a quorum is physically assembled,
17 an individual member of a public body who is a person with a disability as defined in § 51.5-40.1 and uses
18 remote participation counts toward the quorum as if the individual was physically present;

19 2. A medical condition of a member of the member's family requires the member to provide care
20 that prevents the member's physical attendance;

21 3. The member's principal residence is more than 60 miles from the meeting location identified in
22 the required notice for such meeting; or

23 4. The member is unable to attend the meeting due to a personal matter and identifies with
24 specificity the nature of the personal matter. However, the member may not use remote participation due

25 to personal matters more than two meetings per calendar year or 25 percent of the meetings held per
26 calendar year rounded up to the next whole number, whichever is greater.

27 If participation by a member through electronic communication means is approved pursuant to this
28 subsection, the public body holding the meeting shall record in its minutes the remote location from which
29 the member participated; however, the remote location need not be open to the public and may be
30 identified in the minutes by a general description. If participation is approved pursuant to subdivision 1 or
31 2, the public body shall also include in its minutes the fact that the member participated through electronic
32 communication means due to a (i) temporary or permanent disability or other medical condition that
33 prevented the member's physical attendance or (ii) family member's medical condition that required the
34 member to provide care for such family member, thereby preventing the member's physical attendance. If
35 participation is approved pursuant to subdivision 3, the public body shall also include in its minutes the
36 fact that the member participated through electronic communication means due to the distance between
37 the member's principal residence and the meeting location. If participation is approved pursuant to
38 subdivision 4, the public body shall also include in its minutes the specific nature of the personal matter
39 cited by the member.

40 If a member's participation from a remote location pursuant to this subsection is disapproved
41 because such participation would violate the policy adopted pursuant to subsection D, such disapproval
42 shall be recorded in the minutes with specificity.

43 C. With the exception of local governing bodies, local school boards, planning commissions,
44 architectural review boards, zoning appeals boards, and boards with the authority to deny, revoke, or
45 suspend a professional or occupational license, any public body may hold all-virtual public meetings,
46 provided that the public body follows the other requirements in this chapter for meetings, the public body
47 has adopted a policy as described in subsection D, and:

48 1. An indication of whether the meeting will be an in-person or all-virtual public meeting is
49 included in the required meeting notice along with a statement notifying the public that the method by
50 which a public body chooses to meet shall not be changed unless the public body provides a new meeting
51 notice in accordance with the provisions of § 2.2-3707;

- 52 2. Public access to the all-virtual public meeting is provided via electronic communication means;
- 53 3. The electronic communication means used allows the public to hear all members of the public
54 body participating in the all-virtual public meeting and, when audio-visual technology is available, to see
55 the members of the public body as well;
- 56 4. A phone number or other live contact information is provided to alert the public body if the
57 audio or video transmission of the meeting provided by the public body fails, the public body monitors
58 such designated means of communication during the meeting, and the public body takes a recess until
59 public access is restored if the transmission fails for the public;
- 60 5. A copy of the proposed agenda and all agenda packets and, unless exempt, all materials
61 furnished to members of a public body for a meeting is made available to the public in electronic format
62 at the same time that such materials are provided to members of the public body;
- 63 6. The public is afforded the opportunity to comment through electronic means, including by way
64 of written comments, at those public meetings when public comment is customarily received;
- 65 7. No more than two members of the public body are together in any one remote location unless
66 that remote location is open to the public to physically access it;
- 67 8. If a closed session is held during an all-virtual public meeting, transmission of the meeting to
68 the public resumes before the public body votes to certify the closed meeting as required by subsection D
69 of § 2.2-3712;
- 70 9. The public body does not convene an all-virtual public meeting (i) more than two times per
71 calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number,
72 whichever is greater, or (ii) consecutively with another all-virtual public meeting; and
- 73 10. Minutes of all-virtual public meetings held by electronic communication means are taken as
74 required by § 2.2-3707 and include the fact that the meeting was held by electronic communication means
75 and the type of electronic communication means by which the meeting was held. If a member's
76 participation from a remote location pursuant to this subsection is disapproved because such participation
77 would violate the policy adopted pursuant to subsection D, such disapproval shall be recorded in the
78 minutes with specificity.

79 D. Before a public body uses all-virtual public meetings as described in subsection C or allows
80 members to use remote participation as described in subsection B, the public body shall first adopt a
81 policy, by recorded vote at a public meeting, that shall be applied strictly and uniformly, without
82 exception, to the entire membership and without regard to the identity of the member requesting remote
83 participation or the matters that will be considered or voted on at the meeting. The policy shall:

84 1. Describe the circumstances under which an all-virtual public meeting and remote participation
85 will be allowed and the process the public body will use for making requests to use remote participation,
86 approving or denying such requests, and creating a record of such requests; and

87 2. Fix the number of times remote participation for personal matters or all-virtual public meetings
88 can be used per calendar year, not to exceed the limitations set forth in subdivisions B 4 and C 9.

89 The policy shall not prohibit or restrict any individual member of a public body who is participating
90 in an all-virtual meeting or who is using remote participation from voting on matters before the public
91 body.

92 Any public body that creates a committee, subcommittee, or other entity however designated of
93 the public body to perform delegated functions of the public body or to advise the public body may also
94 adopt a policy on behalf of its committee, subcommittee, or other entity that shall apply to the committee,
95 subcommittee, or other entity's use of individual remote participation and all-virtual public meetings.

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