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SENATE BILL NO. 1271

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Simon
on February 23, 2021)

(Patron Prior to Substitute—Senator McPike)

A *BILL to amend and reenact §§ 2.2-3707.01 and 2.2-3708.2 of the Code of Virginia, relating to the Virginia Freedom of Information Act; meetings held by electronic communication means.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3707.01 and 2.2-3708.2 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3707.01. Meetings of the General Assembly.

A. Except as provided in subsection B, public access to any meeting of the General Assembly or a portion thereof shall be governed by rules established by the Joint Rules Committee and approved by a majority vote of each house at the next regular session of the General Assembly. At least 60 days before the adoption of such rules, the Joint Rules Committee shall (i) hold regional public hearings on such proposed rules and (ii) provide a copy of such proposed rules to the Virginia Freedom of Information Advisory Council.

B. Floor sessions of either house of the General Assembly; meetings, including work sessions, of any standing or interim study committee of the General Assembly; meetings, including work sessions, of any subcommittee of such standing or interim study committee; and joint committees of conference of the General Assembly; or a quorum of any such committees or subcommittees, shall be open and governed by this chapter.

C. Meetings of the respective political party caucuses of either house of the General Assembly, including meetings conducted by telephonic or other electronic communication means, without regard to (i) whether the General Assembly is in or out of regular or special session or (ii) whether such caucuses invite staff or guests to participate in their deliberations, shall not be deemed meetings for the purposes of this chapter.

D. No regular, special, or reconvened session of the General Assembly held pursuant to Article IV, Section 6 of the Constitution of Virginia shall be conducted using electronic communication means pursuant to § 2.2-3708.2.

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

A. The following provisions apply to all public bodies:

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

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

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

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

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

3. Any public body, *or any joint meetings thereof*, may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17 *or the locality in which the public body is located has declared a local state of emergency pursuant to § 44-146.21*, provided that (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to ~~address the emergency~~ *provide for the continuity of operations of the public body or the discharge of its lawful purposes, duties, and*

60 *responsibilities.* The public body convening a meeting in accordance with this subdivision shall:

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

64 b. Make arrangements for public access to such meeting *through electronic communication means,*
65 *including videoconferencing if already used by the public body; and*

66 c. *Provide the public with the opportunity to comment at those meetings of the public body when*
67 *public comment is customarily received; and*

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

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

72 *The provisions of this subdivision 3 shall be applicable only for the duration of the emergency*
73 *declared pursuant to § 44-146.17 or 44-146.21.*

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

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

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

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

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

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

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

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

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

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

106 If a state public body holds a meeting through electronic communication means pursuant to this
107 subsection, it shall also hold at least one meeting annually where members in attendance at the meeting
108 are physically assembled at one location and where no members participate by electronic communication
109 means.

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

116 The notice shall include the date, time, place, and purpose for the meeting; shall identify the primary
117 or central meeting location and any remote locations that are open to the public pursuant to subdivision
118 4; shall include notice as to the electronic communication means by which members of the public may
119 witness the meeting; and shall include a telephone number that may be used to notify the primary or
120 central meeting location of any interruption in the telephonic or video broadcast of the meeting. Any
121 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 is restored.

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

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

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

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

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

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

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

b. The dates and purposes of each such meeting;

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

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

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

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

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

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

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

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

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

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