

23105274D

SENATE BILL NO. 1351

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on January 25, 2023)

(Patron Prior to Substitute—Senator Marsden)

A BILL to amend and reenact § 2.2-3708.3 of the Code of Virginia, relating to the Virginia Freedom of Information Act; electronic meetings; local and regional public bodies.

Be it enacted by the General Assembly of Virginia:

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

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

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

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

1. The member has a temporary or permanent disability or other medical condition that prevents the member's physical attendance;

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

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

4. The member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter. However, the member may not use remote participation due to personal matters more than two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.

If participation by a member through electronic communication means is approved pursuant to this subsection, 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 and may be identified in the minutes by a general description. If participation is approved pursuant to subdivision 1 or 2, the public body shall also include in its minutes the fact that the member participated through electronic communication means due to a (i) temporary or permanent disability or other medical condition that prevented the member's physical attendance or (ii) family member's medical condition that required the member to provide care for such family member, thereby preventing the member's physical attendance. If participation is approved pursuant to subdivision 3, the public body shall also include in its minutes the fact that the member participated through electronic communication means due to the distance between the member's principal residence and the meeting location. If participation is approved pursuant to subdivision 4, 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 this subsection is disapproved because such participation would violate the policy adopted pursuant to subsection D, such disapproval shall be recorded in the minutes with specificity.

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

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

2. Public access to the all-virtual public meeting is provided via electronic communication means;

3. The electronic communication means used allows the public to hear all members of the public body participating in the all-virtual public meeting and, when audio-visual technology is available, to see the members of the public body as well;

4. A phone number or other live contact information is provided to alert the public body if the audio or video transmission of the meeting provided by the public body fails, the public body monitors such

60 designated means of communication during the meeting, and the public body takes a recess until public
61 access is restored if the transmission fails for the public;

62 5. A copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished
63 to members of a public body for a meeting is made available to the public in electronic format at the
64 same time that such materials are provided to members of the public body;

65 6. The public is afforded the opportunity to comment through electronic means, including by way of
66 written comments, at those public meetings when public comment is customarily received;

67 7. No more than two members of the public body are together in any one remote location unless that
68 remote location is open to the public to physically access it;

69 8. If a closed session is held during an all-virtual public meeting, transmission of the meeting to the
70 public resumes before the public body votes to certify the closed meeting as required by subsection D of
71 § 2.2-3712;

72 9. ~~The~~ *If the public body is a state public body, it does not convene an all-virtual public meeting (i)*
73 *more than two times per calendar year or 25 percent of the meetings held per calendar year rounded up*
74 *to the next whole number, whichever is greater, or (ii) consecutively with another all-virtual public*
75 *meeting; and*

76 10. *If the public body is a local or regional public body, it does not convene an all-virtual public*
77 *meeting more than 50 percent of the meetings held per calendar year rounded up to the next whole*
78 *number; and*

79 11. Minutes of all-virtual public meetings held by electronic communication means are taken as
80 required by § 2.2-3707 and include the fact that the meeting was held by electronic communication
81 means and the type of electronic communication means by which the meeting was held. If a member's
82 participation from a remote location pursuant to this subsection is disapproved because such participation
83 would violate the policy adopted pursuant to subsection D, such disapproval shall be recorded in the
84 minutes with specificity.

85 D. Before a public body uses all-virtual public meetings as described in subsection C or allows
86 members to use remote participation as described in subsection B, the public body shall ~~first~~ *at least*
87 *once annually* adopt a policy, by recorded vote at a public meeting, that shall be applied strictly and
88 uniformly, without exception, to the entire membership and without regard to the identity of the member
89 requesting remote participation or the matters that will be considered or voted on at the meeting. The
90 policy shall:

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

94 2. Fix the number of times remote participation for personal matters or all-virtual public meetings
95 can be used per calendar year, not to exceed the limitations set forth in subdivisions B 4 and C 9 *or 10,*
96 *as appropriate.*

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