



ELECTRONIC MEETINGS UNDER THE VIRGINIA FREEDOM OF INFORMATION ACT

As of July 1, 2018, public bodies may hold meetings by electronic communication means as long as the meetings comply with the heightened procedural requirements set out in § 2.2-3708.2 of FOIA. Previously the law on conducting meetings by electronic communications means was set forth in former §§ 2.2-3708 and 2.2-3708.1. Former § 2.2-3708 addressed meetings held by state public bodies and meetings held to address states of emergency as declared by the Governor. Former § 2.2-3708.1 addressed individual participation by electronic communication means when a personal matter or medical condition prevented physical attendance, or when a member of a regional body lived 60 miles or more from the central meeting location. All of these provisions remain in the new law, but have been amended and consolidated into new § 2.2-3708.2. This guidance document is organized to correspond to the provisions of § 2.2-3708.2, as follows:

- Appendix A addresses individual participation using electronic communication due to a medical condition or personal matter that prevents physical attendance at the meeting (available to all public bodies) (corresponds to subdivisions A 1 and A 2 of § 2.2-3708.2);
- Appendix B address the rules for electronic meetings held to address a state of emergency declared by the Governor (available to all public bodies) (corresponds to subdivision A 3 of § 2.2-3708.2).

Note that nothing in FOIA should be construed as to prohibit the use of audio or audio/visual means to increase public participation at meetings. If members of a public body are physically assembled at one location but wish to allow members of the public to listen or provide comment electronically, these heightened procedural requirements would not prevent such public access. Public bodies are always welcome to use electronic means to increase public access even if no members are participating electronically (such as by broadcasting a meeting via radio, television, or online). The specific requirements and limitations on electronic participation described herein apply only to the members of the public body holding a public meeting.

Note also that the definition of "electronic communication" was amended in 2018 to mean "the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information." This definition is applicable to all of the types of electronic participation described below.

Please contact the FOIA Council with any questions you may have concerning the requirements for conducting electronic communication meetings.

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Disability or Medical Condition or Personal Matter Prevents Physical Attendance
(Applies to all public bodies)

Individual members of public bodies may participate in a meeting through electronic communication means from a remote location that is not open to the public if a temporary or permanent disability or other medical condition or a personal matter prevents physically attending the meeting, following the procedures and limitations described hereafter. In order for a member to participate through electronic means under these provisions, a quorum of the public body must be physically assembled at the primary or central meeting location and the voice of the remote participant must be able to be heard by all persons at the primary or central meeting location. Public bodies must also adopt a policy on such participation before any member may participate from a remote location. The requirements for such participation are examined in further detail below. Please note that so long as all of the requirements are met, a member participating through electronic communications means under this section may make motions, vote, join in closed meetings, and otherwise participate fully as if he or she was physically present. If the procedural requirements are not met, however, then the member may only monitor the meeting (i.e., listen or watch, depending on the technology used) and cannot otherwise participate. The remote location where the member using electronic communications is does not have to be open to the public under these provisions.

A. Participation by member with **disability or other medical condition**; procedural requirements:

1. Physically assembled quorum is required;
2. Remote member's voice must be heard by all;
3. Member must notify chair of inability to attend due to temporary or permanent disability or other medical condition that prevents physical attendance on or before the day of the meeting;
4. Fact of disability or medical condition must be recorded in the minutes;
5. Remote location must be recorded in the minutes; and
6. Member's remote participation must be in accord with the policy on electronic participation adopted by the public body (see Appendix D below).

NOTE: While the fact that a disability or medical condition prevents the members' physical attendance must be recorded in the minutes, it is not required to identify the specific disability or medical condition.

Examples:

- Temporary hospitalization or confined to home;
- Contagious illness; or
- Any permanent physical disability that prevents travel to the meeting location.

B. Participation if a **personal matter** prevents attendance; procedural requirements:



1. Physically assembled quorum is required;
2. Remote member's voice must be heard by all;
3. Remote member must notify chair of the public body on or before the day of the meeting;
4. Nature of the emergency or personal matter must be identified;
5. Nature of the personal matter must be recorded in the minutes;
6. Remote location must be recorded in the minutes; and
7. Member's remote participation must be in accord with the policy on electronic participation adopted by the public body (see Appendix D below).

NOTE: Participation because of a personal matter that prevents attendance is limited to two (2) meetings per calendar year.

If a member's participation is disapproved because it would violate the public body's policy on participation, that fact must be recorded in the minutes with specificity. However, the member may continue to monitor the meeting from the remote location, but may not participate in the proceeding and may not be counted as present at the meeting.

Examples:

- Flat tire on the way to the meeting, call in from cell phone at side of the road;
- Traffic congestion or stoppage;
- Personal, family, or business emergency; or
- Blizzard, flood, or other sudden severe weather conditions that prevent travel to the meeting location.
- Business trip;
- Family trip; or
- Scheduling conflicts.

NOTE: Monitoring a meeting - As stated above, if a member of a public body cannot meet the procedural requirements to participate in a meeting by electronic communication means, the member may still monitor the meeting by listening or watching by electronic communication means. However, the member cannot be counted as present and cannot participate. In such a situation, as a matter of best practices, it is suggested that the chair of the public body make a statement to inform the public and the other members, such as: "Please observe that [member name] could not attend today's meeting, but is [listening/watching] the meeting [by speakerphone, videoconference, or whatever electronic communication means is being utilized]. However, [member name] is only monitoring the meeting. [He/she] is not counted as present, and cannot make motions, vote, or otherwise participate."



State of Emergency Declared by the Governor

(Applies to all public bodies)

Any public body 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, subject to the follow procedures and conditions:

- a. The catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location; and
- b. The purpose of the meeting is to address the emergency.

In addition, the public body must:

- a. Give public notice using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided members of the local public body conducting the meeting;
- b. Make arrangements for public access to such meeting;
- c. Otherwise comply with the provisions of § 2.2-3708.2.
- d. State in the minutes the nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held; and
- e. Adopt a policy on remote participation (see Appendix D below).

NOTE: In addition to requiring that a policy on remote participation be adopted, subsection C of § 2.2-3708.2 would also require that a quorum be physically assembled and the voice of any member participating at a remote location must be able to be heard by all at the central meeting location. Because electronic meetings held in order to respond to a state of emergency declared by the Governor specifically do not require a quorum and therefore do not require a central meeting location, there is an apparent conflict in these requirements. As a rule of construction, the more specific provisions control, and therefore for electronic meetings held to respond to a state of emergency declared by the Governor, neither a physical quorum nor a central meeting location is required.

