

Electronic Meetings

Suggested Guidance for Public Bodies Administered by VDH

September 2022

Public Bodies Definition (§ 2.2-3701)

"Public body" means any **legislative body, authority, board, bureau, commission, district, or agency of the Commonwealth or of any political subdivision of the Commonwealth, including counties, cities, and towns, municipal councils, governing bodies of counties, school boards, and planning commissions; governing boards of public institutions of higher education; and other organizations, corporations, or agencies in the Commonwealth supported wholly or principally by public funds.** It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established pursuant to Chapter 50 (§ [38.2-5000](#) et seq.) of Title 38.2 and **(ii) any committee, subcommittee, or other entity however designated of the public body created to perform delegated functions of the public body or to advise the public body.** It shall not exclude any such committee, subcommittee, or entity because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

Examples of Public Bodies Administered by VDH

- EMS Advisory Board
- Sewage Handling and Disposal Appeals Review Board
- Child Fatality Review Team
- Radiation Advisory Board
- Advisory Board on Pediatric Autoimmune Neuropsychiatric Disorders Associated with Streptococcal Infections and Pediatric Acute-onset Neuropsychiatric Syndrome
- Henrietta Lacks Commission
- Maternal Mortality Review Team
- Task Force on Services for Survivors of Sexual Assault
- Rare Disease Council
- Virginia Breastfeeding Advisory Committee

Definitions

- "All-virtual public meeting" means a public meeting (i) conducted by a public body, other than those excepted pursuant to subsection C of § 2.2-3708.3, using electronic communication means, (ii) during which all members of the public body who participate do so remotely rather than being assembled in one physical location, and (iii) to which public access is provided through electronic communication means.
- "Electronic communication" means the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.
- "Remote participation" means participation by an individual member of a public body by electronic communication means in a public meeting where a quorum of the public body is otherwise physically assembled.

Changes to FOIA Statute – Effective 09/01/22

- Two Code sections separate electronic meetings into two general categories:
 - Electronic meetings held during declared states of emergency (§ 2.2-3708.2), and
 - Electronic meetings held outside of states of emergency, which includes both remote participation by individual members and all-virtual public meetings (new § 2.2-3708.3)
- Elimination of annual report and public comment form for electronic meetings

[FOIA Advisory Council Electronic meetings guide \(rev. 2022\)](#)

Electronic Meetings – Declared Emergencies

Appropriation Act Item 4-0.01 (g)

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 following procedures and conditions:

1. The nature of the declared emergency makes it impracticable or unsafe for the public body or governing board to assemble in a single location;
2. The purpose of meeting is to discuss or transact the business statutorily required or necessary to continue operations of the public body and the discharge of its lawful purposes, duties, and responsibilities; and
3. A public body shall make available a recording or transcript of the meeting on its website in accordance with the timeframes established in §§ 2.2-3707 and 2.2-3707.1 of the Code of Virginia.

The public body must additionally:

1. Give notice to the public using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided to members of the public body or governing board conducting the meeting;
2. Make arrangements for public access to such meeting through electronic means including, to the extent practicable, videoconferencing technology. If the means of communication allows, provide the public with an opportunity to comment;
3. Otherwise comply with the provisions of § 2.2-3708.2; and
4. 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.

Appropriation vs. Code Section Language

Appropriation Act Language

- Does not include local states of emergency
- Requires posting of recording or transcript
- Minutes must be distributed in the same way notice was given
- Make arrangements *to extent practicable* videoconference for public access
- *If means of communications allows*, provide public with opportunity to speak

Code Language (§ 2.2-3708.2)

- Includes local states of emergency
- Videoconference must be available to public access if already used by public body

Policy Requirements

Each public body must adopt a policy for three processes:

- (1) making a request for remote participation,
- (2) approval and denial of requests, and
- (3) creating a record of the request.

Neither remote participation nor all virtual meetings can occur without a written and approved policy

Individual Remote Participation

Minutes must reflect with some specificity the reason for remote participation for members and generally where the remote locations are

If remote participation is due to temporary or permanent disability or other medical condition or member was providing care for a family member, the specific disability or medical condition does not need to be identified

If remote participation by a member is disapproved because it would violate the participation policy adopted by the public body, such disapproval must be recorded in the minutes with specificity

- Even if disapproved, the member may continue to monitor the meeting, but not participate

Individual Remote Participation

Reason for individual remote participation	Examples	Limit to number of times used
The member has a temporary or permanent disability or other medical condition that prevents the member's physical attendance	<ul style="list-style-type: none"> • Temporary hospitalization or confined to home • Contagious illness • Any temporary or permanent physical disability that physically prevents travel to the meeting location 	No
A medical condition of a member of the member's family requires the member to provide care that prevents the member's physical attendance		No
The member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting	--	No
The member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter	<ul style="list-style-type: none"> • Flat tire or other mechanical failure on the way to the meeting; • Traffic congestion or stoppage; • Personal, family, or business emergency; • Blizzard, flood, or other sudden severe weather conditions that prevent travel to the meeting location; • Business trip; • Family trip; or • Scheduling conflicts 	Yes – 2 or 25% of meetings (whichever is greater) per member per year

All Virtual Public Meetings

- Requires a policy allowing an all virtual public meeting
- No more than 2 meetings or 25% of meetings (whichever is greater) per calendar year may be all virtual and may not be consecutive all virtual meetings

Notice to Public	During the Meeting	Minutes
<ol style="list-style-type: none">1. Indication in posting if in person or all virtual and that the method will not be changed unless there is a new notice.2. Provide proposed agenda and packets provided to members to the public at the same time	<ol style="list-style-type: none">1. Public access provided via electronic means2. Means must allow public to hear and see (when applicable) members of the public body3. Phone number for reporting audio/video transmission issues4. Public provided access to comment5. No more than 2 members of the body may participate remotely together6. If closed session, transmission must resume before the body votes to continue	<ol style="list-style-type: none">1. Note that it was an all-virtual meeting, the means used, and any disapprovals of remote participation are noted

Considerations

- Numerical limits are counted separately for different types of electronic meetings (e.g. a member who has reached limit on remote participation for personal reasons can still fully participate if an all virtual meeting occurs).
- A policy can be adopted and used at the same meeting – the physical quorum can adopt and then welcome members who are participating remotely.
- Subcommittees and committees, or other groups within the public body created by the public body are counted separately from the main public body for remote participation limits.

Questions

These guidelines are not meant to prohibit the use of electronic means to expand public participation.

If you have questions, please consult with Alex Jansson, Joe Hilbert, and your office/district's OAG representative

The [FOIA Advisory Council](#) has resources and sample language for policies (page 6-7) to adopt in the [FOIA Electronic meetings guide \(rev. 2022\)](#)