



# VIRGINIA BOARD OF EDUCATION

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# AGENDA ITEM

**Agenda Item:** J

**Date:** September 15, 2022

**Title:** First Review of Proposed Technical Revisions to the *Bylaws of the Virginia Board of Education*

**Presenter:** Jim Chapman, Regulatory and Legal Coordinator  
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**Purpose of Presentation:**

Review/action required by Board of Education bylaws.

**Executive Summary:**

The *Bylaws of the Virginia Board of Education* (“Bylaws”) are the rules governing the Virginia Board of Education (Board). The *Bylaws* were first adopted by the Board in 2000 and were subsequently amended in 2001, 2004, and 2016.

VDOE staff has made proposed revisions to the *Bylaws* in two areas in order to ensure compliance with applicable state laws. The first area of revision concerns electronic participation (Article Four, Section 11). A new section of the Virginia Freedom of Information Act (“FOIA”), § [2.2-3708.3](#), went into effect on September 1, 2022. The new section alters the requirements for electronic participation in situations other than declared states of emergency, and the proposed revisions ensure compliance with FOIA.

The second area of revision concerns the directions for executive sections (Article Five). In order to hold a closed meeting, the Board must comply with the requirements of FOIA found in §§ [2.2-3711](#) and [2.2-3712](#). The suggested revisions add additional language and directions from state law in order to ensure compliance.

The suggested revisions are being presented by the Board for consideration and general discussion. VDOE staff will take note of additional changes requested by members of the Board to bring for final review in October.

According to Article Twelve of the *Bylaws*, any amendment requires a vote of at least seven members of the Board after a first and final review has been completed at two separate meetings. The requirement for a first and final review at two separate meetings may not be waived by the Board, unless such waiver is approved by every member of the Board.

**Action Requested:**

Action will be requested at a future meeting. Specify anticipated date below:  
October 20, 2022

**Superintendent’s Recommendation**

The Superintendent of Public Instruction recommends that the Board of Education receive the proposed revisions to the *Bylaws of the Virginia Board of Education* for first review.

**Previous Review or Action:**

No previous review or action.

**Background Information and Statutory Authority:**

Section [22.1-16](#) of the Code of Virginia states that “[t]he Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title.” The *Bylaws* were first adopted on June 22, 2000, and were subsequently amended in October 2000, October 2001, September 2004, and February 2016.

House Bill [444](#) (2022) introduced a number of important changes to the structure of public meeting provisions of FOIA, many of which allow greater flexibility for all-virtual public meetings<sup>1</sup> and remote participation. Of particular importance for the Board is that § [2.2-3708.2](#), which previously included requirements for all meetings held through electronic communication means was amended so that it only applies to meetings held through electronic communication means during a declared state of emergency. A new section, § [2.2-3708.3](#), was then added and now governs meetings held through electronic communication means in situations other than declared states of emergency.

Section [2.2-3708.3](#) has many of the same features as its predecessor, but there are at least two important differences. First, § [2.2-3708.3](#) now allows for remote participation by a member when “[t]he member’s principal residence is more than 60 miles from the meeting location identified in

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<sup>1</sup> The amended public meeting laws introduced by HB444 do not allow certain public bodies to conduct all-virtual public meetings, including “boards with the authority to deny, revoke, or suspend a professional or occupational license.” § [2.2-3708.3](#) C. VDOE staff contacted the Virginia Freedom of Information Advisory Council to clarify whether this exception applies categorically to the Board or if it applies only when the Board is meeting to deny, revoke, or suspend a professional or occupational license. The response indicated that the Board may not hold an all-virtual public meeting except during a state of emergency.

the required notice for such meeting.” Second, the new section requires a public body to adopt a policy for remote participation that (1) describes the circumstances under which remote participation will be allowed, (2) describes the process the public body will use for making requests to use remote participation, (3) describes the process for approving or denying such requests, (4) describes the process for creating a record of such requests, and (5) fixes the number of times remote participation for personal matters can be used in a calendar year, which cannot exceed the limitations provided in § [2.2-3708.3](#).

The suggested revisions to the *Bylaws* attempt to intrude as little as possible into the existing text while also meeting the requirements of the amendments to FOIA. The revisions to the first paragraph of Article Four, Section 11 (“Section 11”), clarify that the provisions of § [2.2-3708.2](#) govern during a declared state of emergency while § [2.2-3708.3](#) governs in situations other than declared states of emergency. In the third paragraph of Section 11, the “voice arrangement” provision has been detached from the previous clause that stated legal requirements.<sup>2</sup>

The remaining provisions are designed to ensure that the Section 11 meets the requirements of the remote participation policy described in § [2.2-3708.3](#) D, which are stated above: (1) the revised policy allows for remote participation for any of the circumstances described in § [2.2-3708.3](#) B; (2) requests for remote participation are made to the President and (3) shall be approved unless the remote participation violates the policy or FOIA; (4) the record of requests will be maintained in the Board’s minutes, since both approvals and disapprovals must be noted there; and (5) the revisions provide for the maximum remote participation allowed by FOIA.<sup>3</sup>

The proposed revisions also align Article Five regarding executive sessions to the requirements of FOIA. More specifically, the proposed revisions clarify what must be in the motion that the Board adopts to go into executive session, what can be done in executive session, and what must occur upon reconvening in public session. *See* § [2.2-3712](#) A, C, and D.

**Timetable for Further Review/Action:**

It is anticipated that this item will return to the Board for final review on October 20, 2022. Following Board approval, copies of the *Bylaws* will be provided to all members and posted on the Board’s webpage.

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<sup>2</sup> The amendments dropped this requirement altogether from the remote participation provisions of FOIA. However, the Virginia Freedom of Information Advisory Council staff has stated that this was likely an oversight and that they anticipate it will be addressed during the next session of the General Assembly. Accordingly, VDOE staff recommends that the Board retain the provision since it accords with the Board’s current practice.

<sup>3</sup> There are no limitations on remote participation due to a member’s temporary disability or medical condition, a medical condition of a member’s family that requires the member’s care, or when a member’s principal residence is more than 60 miles from the meeting location. However, remote participation due to a personal matter is limited to “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.” The revisions align the *Bylaws* to the statute.

**Impact on Fiscal and Human Resources:**

This action will not affect the VDOE's resources nor will it have an impact on local school divisions' resources.