



COMMONWEALTH of VIRGINIA

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The Honorable Eileen Filler-Corn
Speaker, Virginia House of Delegates
Post Office Box 406
Richmond, Virginia 23218

Dear Speaker Filler-Corn:

I am responding to your request for an official advisory opinion pursuant to § 2.2-505 of the Code of Virginia.

Issue Presented

You inquire whether Items 4-0.01 in House Bill 29 and House Bill 30 permit the House of Delegates and the Senate of Virginia (collectively, “the General Assembly”) to meet electronically during an emergency.

Statutory Background

Items 4-0.01 in House Bill 29 and House Bill 30 read, in relevant part:

Notwithstanding any other provision of law, any public body, including any state, local, regional, or regulatory body, or a governing board as defined in § 54.1-2345 of the Code of Virginia may meet by electronic communication means without a quorum of the public body or any member of the governing board physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, provided that (i) the nature of the declared emergency makes it impracticable or unsafe for the public body or governing board to assemble in a single location; (ii) the purpose of meeting is to discuss or transact the business statutorily required or necessary to continue operations of the public body or common interest community association as defined in § 54.1-2345 of the Code of Virginia and the discharge of its lawful purposes, duties, and responsibilities; (iii) 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; and (iv) the governing board shall distribute minutes of a meeting held pursuant to this subdivision to common interest community association members by the same method used to provide notice of the meeting.^[1]

Applicable Law and Discussion

Items 4-0.01 in House Bill 29 and House Bill 30 permit the House of Delegates and the Senate of Virginia to meet electronically during an emergency, provided certain conditions are met.

The Virginia Freedom of Information Act (VFOIA) creates general requirements that meetings of “public bodies” shall be open to the public and conducted in person.² Except as provided in two specified statutory provisions “[n]o meeting shall be conducted through telephonic, video, electronic or other electronic communication means where the members are not physically assembled to discuss or transact public business, except as provided in § 2.2-3708.2 or as may be specifically provided in Title 54.1 for the summary suspension of professional licenses.”³ Further, § 2.2-3707.01(D) provides that “[n]o 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.”⁴ Thus, operating together, §§ 2.2-3707(B) and - 3707.01(D) would generally preclude the General Assembly from meeting electronically, including during an emergency.

However, in Items 4-0.01 in House Bill 29 and House Bill 30, the General Assembly specifically provided that “[n]otwithstanding any other provision of law, any public body . . . may meet by electronic communication means” during a declared state of emergency so long as certain requirements are satisfied.⁵ Although Items 4-0.01 in House Bill 29 and House Bill 30 do not define “public body,” VFOIA specifically defines that term as including “legislative bod[ies]” such as the Virginia House of Delegates and Senate of Virginia.⁶ Because Items 4-0.01 in House Bill 29 and House Bill 30 address “the same subject matter” as VFOIA, it is appropriate to construe their use of the term “public body” *in pari materia* with VFOIA’s use of that same term.⁷

¹ H.B. 29, 2020 Reg. Sess., Item 4-0.01 (2020 Va. Acts ch. 1283), and H.B. 30, 2020 Reg. Sess., Item 4-0.01, both enactments available at <https://budget.lis.virginia.gov/>.

² The term “public body” is broadly defined for purposes of VFOIA to include “any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, 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.” VA. CODE ANN. § 2.2-3701.

³ VA. CODE ANN. § 2.2-3707(B).

⁴ VA. CODE ANN. § 2.2-3707.01(D).

⁵ H.B. 29, 2020 Reg. Sess., Item 4-0.01 (2020 Va. Acts ch. 1283), and H.B. 30, 2020 Reg. Sess., Item 4-0.01.

⁶ VA. CODE ANN. § 2.2-3701.

⁷ Bd. of Supvrs. v. Cohn, 296 Va. 465, 473, 821 S.E.2d 693, 697 (2018) (observing that statutes related to the same subject matter are typically considered *in pari materia*).

Accordingly, Items 4-0.01 in House Bill 29 and House Bill 30 authorize the House and Senate to meet electronically during a declared state of emergency so long as those Items are in force and the other requirements are satisfied.⁸

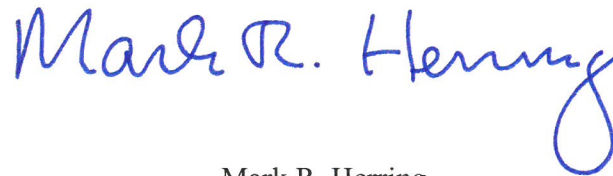
Even if a body chooses to meet electronically pursuant to Items 4-0.01 in House Bill 29 and House Bill 30, it is important that bodies continue to adhere to important principles of open government and transparency. The fundamental commitment to openness must be upheld and maintained, even as public bodies consider alternative methods to conduct the operation of the government.

Conclusion

For these reasons, it is my opinion that Items 4-0.01 in House Bill 29 and House Bill 30 permit the House of Delegates and the Senate of Virginia to meet electronically during a declared emergency, including the current COVID-19 pandemic, provided they can satisfy the conditions set forth in the Items.

With kindest regards, I am,

Very truly yours,



Mark R. Herring
Attorney General

⁸ So long as the respective budgets are in effect, to meet electronically, the General Assembly must satisfy the remaining prongs set out by Items 4-0.01 in House Bill 29 and House Bill 30:

- (i) the nature of the declared emergency makes it impracticable or unsafe for the public body or governing board to assemble in a single location; (ii) the purpose of meeting is to discuss or transact the business statutorily required or necessary to continue operations of the public body or common interest community association as defined in § 54.1-2345 of the Code of Virginia and the discharge of its lawful purposes, duties, and responsibilities; (iii) 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; and (iv) the governing board shall distribute minutes of a meeting held pursuant to this subdivision to common interest community association members by the same method used to provide notice of the meeting.

Whether these additional requirements of Items 4-0.01 in House Bill 29 and House Bill 30 are satisfied is a fact-dependent question that is beyond the scope of this opinion.