

VIRGINIA ACTS OF ASSEMBLY -- 2007 RECONVENED SESSION

CHAPTER 945

An Act to amend and reenact §§ 2.2-3701, 2.2-3708, 23-38.95, and 23-50.16:32 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-3708.1, relating to the Virginia Freedom of Information Act; electronic communication meetings; participation in meetings in event of emergency; certain disabilities; regional public bodies.

[S 1001]

Approved April 10, 2007

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3701, 2.2-3708, 23-38.95, and 23-50.16:32 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-3708.1 as follows:

§ 2.2-3701. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Closed meeting" means a meeting from which the public is excluded.

"Electronic communication" means any audio or combined audio and visual communication method.

"Emergency" means an unforeseen circumstance rendering the notice required by this chapter impossible or impracticable and which circumstance requires immediate action.

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.2-3708, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. The gathering of employees of a public body shall not be deemed a "meeting" subject to the provisions of this chapter.

"Open meeting" or "public meeting" means a meeting at which the public may be present.

"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 cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors 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.

For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records.

"Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.

"Regional public body" means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, whose members are appointed by the participating local governing bodies, and such unit includes two or more counties or cities.

"Scholastic records" means those records containing information directly related to a student and maintained by a public body that is an educational agency or institution or by a person acting for such agency or institution.

§ 2.2-3708. Electronic communication meetings; applicability; physical quorum required; notice; report.

A. ~~Except as expressly provided in § 2.2-3708.1, shall be a violation of this chapter for any political subdivision or any no local governing body, school board, or any authority, board, bureau, commission, district or agency of local government or, any committee thereof to, or any entity created by a local governing body, school board, or any local authority, board, or commission shall conduct a meeting wherein the public business is discussed or transacted through telephonic, video, electronic or other communication means where the members are not physically assembled. Nothing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation.~~

B. For purposes of this section:

"Electronic communication means" means any audio or combined audio and visual communication method.

"Public body" means any public body of the Commonwealth, but excludes any political subdivision or any governing body, authority, board, bureau, commission, district or agency of local government.

B. Except as provided in subsection D of § 2.2-3707.01, state public bodies may conduct any meeting wherein the public business is discussed or transacted through electronic communication means. ~~Where, provided (i) a quorum of a the public body of the Commonwealth is physically assembled at one primary or central meeting location for the purpose of conducting a meeting authorized under this section, additional members of such public body may participate in the meeting through electronic communication means provided such participation is available to the public, (ii) notice of the meeting has been given in accordance with subsection C, and (iii) the remote locations, from which additional members of the public body participate through electronic communication means, are open to the public. All persons attending the meeting at any of the meeting locations shall be afforded the same opportunity to address the public body as persons attending the primary or central location.~~

If a an authorized public body holds an electronic meeting pursuant to this section, the public body it shall also hold at least one meeting annually where members in attendance at the meeting are physically assembled at one location and where no members participate by electronic communication means.

C. Notice of any meetings held pursuant to this section shall be provided at least ~~seven~~ *three* working days in advance of the date scheduled for the meeting. The notice shall include the date, time, place, and purpose for the meeting; shall identify the locations for the meeting; and shall include a telephone number that may be used at remote locations to notify the primary or central meeting location of any interruption in the telephonic or video broadcast of the meeting to the remote locations. ~~All locations for the meeting shall be made accessible to the public. All persons attending the meeting at any of the meeting locations shall be afforded the same opportunity to address the public body as persons attending the primary or central location.~~ Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored.

Seven working days' notice shall not be required for meetings authorized under this section continued to address an emergency as provided in subsection F or to conclude the agenda of a meeting authorized under this section for which the proper notice has been given, when the date, time, place, and purpose of the continued meeting are set during the meeting prior to adjournment.

D. An agenda and materials *Agenda packets and, unless exempt, all materials* that will be distributed to members of the public body and that have been made available to the staff of the public body in sufficient time for duplication and forwarding to all locations where public access will be provided shall be made available to the public at the time of the meeting. Minutes of all meetings held by electronic communication means shall be recorded as required by § 2.2-3707. Votes taken during any meeting conducted through electronic communication means shall be recorded by name in roll-call fashion and included in the minutes.

E. Any public body that meets by electronic communication means shall make a written report of the following to the Virginia Freedom of Information Advisory Council and the Joint Commission on Technology and Science by December 15 of each year:

1. The total number of electronic communication meetings held during the preceding year;
2. The dates and purposes of the meetings;
3. The number of sites for each meeting;
4. The types of electronic communication means by which the meetings were held;
5. The number of participants, including members of the public, at each meeting location;
6. The identity of the members of the public body recorded as absent, and those recorded as present at each meeting location;
7. A summary of any public comment received about the electronic communication meetings; and
8. A written summary of the public body's experience using electronic communication meetings, including its logistical and technical experience.

F. A public body may meet by electronic communication means as often as needed if an emergency exists and the public body is unable to meet in regular session. *E. Three working days' notice shall not be required for meetings authorized under this section that are continued to address an emergency or to conclude the agenda of the meeting for which proper notice has been given, when the date, time, place, and purpose of the continued meeting are set during the meeting prior to adjournment.* Public bodies conducting emergency meetings through electronic communication means shall comply with the provisions of subsection D requiring minutes of the meeting. The nature of the emergency shall be stated in the minutes.

F. Any authorized public body that meets by electronic communication means shall make a written report of the following to the Virginia Freedom of Information Advisory Council and the Joint Commission on Technology and Science by December 15 of each year:

1. The total number of electronic communication meetings held that year;
2. The dates and purposes of the meetings;
3. The number of sites for each meeting;
4. The types of electronic communication means by which the meetings were held;
5. The number of participants, including members of the public, at each meeting location;
6. The identity of the members of the public body recorded as absent and those recorded as present at each meeting location;
7. A summary of any public comment received about the electronic communication meetings; and
8. A written summary of the public body's experience using electronic communication meetings, including its logistical and technical experience.

§ 2.2-3708.1. Participation in meetings in event of emergency; certain disabilities; distance from meeting location for certain public bodies.

A. A member of a public body may participate in a meeting governed by this chapter through electronic communication means from a remote location that is not open to the public only as follows and subject to the requirements of subsection B:

1. If, on the day of a meeting, a member of the public body holding the meeting notifies the chair of the public body that such member is unable to attend the meeting due to an emergency and identifies with specificity the nature of the emergency, and the public body holding the meeting (a) approves such member's participation by a majority vote of the members present and (b) records in its minutes the specific nature of the emergency and the remote location from which the member participated.

Such participation by the member shall be limited each calendar year to two meetings or 25 percent of the meetings of the public body, whichever is fewer;

2. If a member of a public body notifies the chair of the public body that such member is unable to attend a meeting due to a temporary or permanent disability or other medical condition that prevents the member's physical attendance and the public body records this fact and the remote location from which the member participated in its minutes; or

3. If, on the day of a meeting, a member of a regional public body notifies the chair of the public body that such member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting and the public body holding the meeting (a) approves such member's participation by a majority vote of the members present and (b) records in its minutes the remote location from which the member participated.

B. Participation by a member of a public body as authorized under subsection A shall be only under the following conditions:

1. A quorum of the public body is physically assembled at the primary or central meeting location; and

2. The public body makes arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.

§ 23-38.95. Public access to information.

A covered institution shall continue to be subject to § 2.2-4342 and to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), but shall be entitled to conduct business pursuant to § 2.2-3709, in the case of a public institution of higher education to which that section applies, and, in all cases, may conduct business as a "state public body" for purposes of ~~subsection B~~ of § 2.2-3708.

§ 23-50.16:32. Confidential and public information.

A. The Authority shall be subject to the provisions of the Freedom of Information Act (§ 2.2-3700 et seq.), which shall include the exclusions set forth in subdivision 15 of § 2.2-3705.7 and subdivision 24 of subsection A of § 2.2-3711.

B. For purposes of the Freedom of Information Act (§ 2.2-3700 et seq.), meetings of the Board shall not be considered meetings of the Board of Visitors of the University. Meetings of the Board may be conducted through telephonic or video means as provided in ~~subsections C through F~~ of § 2.2-3708 or similar provisions of any successor law.