

VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

CHAPTER 694

An Act to amend and reenact §§ 2.2-3708, 2.2-3708.1, and 30-179 of the Code of Virginia, relating to the Virginia Freedom of Information Act; meeting by electronic communication means by certain committees, subcommittees, etc., of state public bodies; personal matters.

[S 1263]

Approved March 21, 2013

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3708, 2.2-3708.1, and 30-179 of the Code of Virginia are amended and reenacted as follows:

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

A. Except as expressly provided in subsection G of this section or § 2.2-3708.1, no local governing body, school board, or any authority, board, bureau, commission, district or agency of local government, any committee thereof, 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. Except as provided in *subsection G or H of this section* or 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, provided (i) a quorum of the public body is physically assembled at one primary or central meeting location, (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. ~~State public bodies, however, may meet by electronic communication means without a quorum of the public body physically assembled at one location when (a) the Governor has declared a state of emergency in accordance with § 44-146.17, (b) the meeting is necessary to take action to address the emergency, and (c) the public body otherwise complies with the provisions of this section.~~

If an authorized public body holds an electronic meeting pursuant to this section, 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 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. 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.

D. 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. Three working days' notice shall not be required for meetings authorized under this section held in accordance with subsection G or 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. A copy of the agenda for the meeting;

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

In addition, any authorized public body shall make available to the public at any meeting conducted in accordance with this section a public comment form prepared by the Virginia Freedom of Information Advisory Council in accordance with § 30-179.

G. Any ~~local governing body, school board, or any authority, board, bureau, commission, district, or agency of local government~~ 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, provided (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to address the emergency. The ~~local~~ public body convening a meeting in accordance with this subsection shall (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; and (c) otherwise comply with the provisions of this section. The nature of the emergency ~~and, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held~~ shall be stated in the minutes.

H. An advisory public body, defined as any state public body classified as advisory pursuant to § 2.2-2100 or any committee, subcommittee, or other entity, however designated, of a state public body created to advise the state public body, may meet by electronic communication means without a quorum of the advisory public body being physically assembled at one location, provided (i) the meeting is conducted utilizing a combined audio and visual communication method; (ii) a primary or central meeting location is established and identified in the notice in accordance with subsection C; (iii) the remote locations, from which additional members of the advisory public body participate through the combined audio and visual communication method, are open to the public and are identified in the notice in accordance with subsection C; (iv) all persons attending the meeting at any of the meeting locations shall be afforded the same opportunity to address the advisory public body as persons attending the primary or central location; and (v) all other provisions of this section are met. Any advisory public body holding electronic communication meetings in accordance with this subsection shall make an audiovisual recording of any such meeting, which recording shall be preserved by the advisory public body for a period of three years from the date of the meeting. The recording shall be available to the public for inspection and copying pursuant to § 2.2-3704. Any portion of the meeting that is closed to the public in accordance with this chapter may be recorded, but such recording is not required. Any audiovisual recording of any closed portion of the meeting shall not be subject to mandatory public disclosure.

§ 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 or before 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 or personal matter and identifies with specificity the nature of the emergency or personal matter, and the public body holding the meeting (a) approves such member's participation by a majority vote of the members present at a meeting and (b) records in its minutes the specific nature of the emergency or personal matter 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.

§ 30-179. Powers and duties of the Council.

The Council shall:

1. Furnish, upon request, advisory opinions or guidelines, and other appropriate information regarding the Freedom of Information Act (§ 2.2-3700 et seq.) to any person or agency of state or local government, in an expeditious manner;
2. Conduct training seminars and educational programs for the members and staff of public bodies and other interested persons on the requirements of the Freedom of Information Act (§ 2.2-3700 et seq.);
3. Publish such educational materials as it deems appropriate on the provisions of the Freedom of Information Act (§ 2.2-3700 et seq.);
4. Request from any agency of state or local government such assistance, services and information as will enable the Council to effectively carry out its responsibilities. Information provided to the Council by an agency of state or local government shall not be released to any other party unless authorized by such agency;
5. Assist in the development and implementation of the provisions of § 2.2-3704.1; ~~and~~
6. *Develop the public comment form for use by designated public bodies in accordance with subsection F of § 2.2-3708; and*
7. Report annually on or before December 1 of each year on its activities and findings regarding the Freedom of Information Act (§ 2.2-3700 et seq.), including recommendations for changes in the law, to the General Assembly and the Governor. The annual report shall be published as a state document.

2. That the provisions of subsection H of § 2.2-3708 of the Code of Virginia shall expire on July 1, 2014.