

VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

CHAPTER 56

An Act to amend and reenact §§ 2.2-3708, 2.2-3708.1, and 30-179 of the Code of Virginia, relating to the Freedom of Information Act; meetings held by electronic communication means.

[H 908]

Approved February 28, 2018

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 ~~H~~ or § 2.2-3708.1, no local governing body, school board, or ~~any~~ authority, board, bureau, commission, district, or agency of local government, ~~any~~ or committee thereof, ~~or any and no~~ 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 *that* (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 members of the public are provided a substantially equivalent electronic communication means through which to witness the meeting. For the purposes of this subsection, "witness" means observe or listen.~~

If an authorized public body holds ~~an electronic~~ a meeting by *electronic communication means* 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 regular meeting held pursuant to this section shall be provided at least three working days in advance of the date scheduled for the meeting. Notice, reasonable under the circumstance, of special, emergency, or continued meetings held pursuant to this section shall be given contemporaneously with the notice provided to members of the public body conducting the meeting. For the purposes of this subsection, "continued meeting" means a meeting that is continued to address an emergency or to conclude the agenda of a meeting for which proper notice was given.

The notice shall include the date, time, place, and purpose for the meeting; shall identify the ~~locations for the meeting~~ *primary or central meeting location and any remote locations that are open to the public pursuant to subsection E; and shall include notice as to the electronic communication means by which members of the public may witness 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 is restored.

D. A copy of the proposed agenda and agenda packets and, unless exempt, all materials that will be distributed to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body conducting the meeting.

E. Public access to the remote locations from which additional members of the public body participate through electronic communication means shall be encouraged but not required. However, if three or more members are gathered at the same remote location, then such remote location shall be open to the public.

If access to remote locations is afforded, (i) all persons attending the meeting at any of the remote locations shall be afforded the same opportunity to address the public body as persons attending at the primary or central location and (ii) a copy of the proposed agenda and 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 for the meeting shall be made available to for inspection by~~

members of the public attending the meeting at any of the remote locations at the time of the meeting.

F. 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. G.~~ Three working days' notice shall not be required for meetings authorized under this section held in accordance with subsection ~~G I.~~ Public bodies conducting emergency meetings through electronic communication means shall comply with the provisions of subsection ~~D F~~ requiring minutes of the meeting. The nature of the emergency shall be stated in the minutes.

~~F. H.~~ 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 by December 15 of each year:

1. The total number of ~~electronic communication~~ meetings held that year *in which members participated by electronic communication means;*

2. The dates and purposes of ~~the meetings~~ *each such meeting;*

3. A copy of the agenda for ~~the~~ *each such meeting;*

4. The ~~number of sites for~~ *primary or central meeting location of each such meeting;*

5. The types of electronic communication means by which ~~the meetings were~~ *each meeting was held;*

6. ~~The~~ *If possible, the* number of participants, including members of the public, ~~at who witnessed each meeting location through electronic communication means;~~

7. The identity of the members of the public body recorded as ~~absent and those recorded~~ as present at each meeting, and whether each member was present at the primary or central meeting location or participated through electronic communication means;

8. The identity of any members of the public body who were recorded as absent at each meeting and any members who were recorded as absent at a meeting but who monitored the meeting through electronic communication means;

9. *If members of the public were granted access to a remote location from which a member participated in a meeting through electronic communication means, the number of members of the public at each such remote location;*

10. A summary of any public comment received about the *process of conducting a meeting by electronic communication* ~~meetings means;~~ and

~~9. 11.~~ A written summary of the public body's experience using electronic communication *means for its 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. I.~~ 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, provided that (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 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 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, 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.

§ 2.2-3708.1. Participation in meetings due to personal matter; certain disabilities; distance from meeting location for certain public bodies.

A. A member of a public body may participate *through electronic communication means* in a meeting governed by this chapter ~~through electronic communication means from a remote location that is not open to the public only as provided in § 2.2-3708 or 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 a personal matter and identifies with specificity the nature of the personal matter, and the public body holding the meeting records in its minutes the specific nature of the personal matter and the remote location from which the member participated. If a member's participation from a remote location is disapproved because such participation would violate the policy adopted pursuant to subsection B, such disapproval shall be recorded in the minutes with specificity.

Such participation by the member shall be limited each calendar year to two meetings;

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 records in its minutes the remote location from which the member participated. If a member's participation from a remote location is disapproved because such participation would violate the policy adopted pursuant to subsection B, such disapproval shall be recorded in the minutes with specificity.

B. Participation *in a meeting through electronic communication means* by a member of a public body as ~~authorized under~~ pursuant to subsection A shall be *authorized only* ~~under~~ if the following conditions are met:

1. The public body has adopted a written policy allowing for and governing participation of its members by electronic communication means, including an approval process for such participation, subject to the express limitations imposed by this section. Once adopted, the policy shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting;

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

3. 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;

6. Develop the public comment form for use by designated public bodies in accordance with subsection F H of § 2.2-3708;

7. Develop an online public comment form to be posted on the Council's official public government website to enable any requester to comment on the quality of assistance provided to the requester by a public body; and

8. 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.