

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 536

An Act to amend and reenact §§ 2.2-3707, 2.2-3707.2, 15.2-1416, 15.2-2308.1, and 23.1-1303 of the Code of Virginia, relating to the Virginia Freedom of Information Act; state public bodies; meetings; virtual public access.

[H 1738]

Approved March 26, 2023

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3707, 2.2-3707.2, 15.2-1416, 15.2-2308.1, and 23.1-1303 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.

A. All meetings of public bodies shall be open, except as provided in §§ 2.2-3707.01 and 2.2-3711.

B. All state public bodies subject to the provisions of this chapter:

1. May allow public access to their meetings through electronic communication means, including telephone or videoconferencing, if already used by the state public body;

2. May provide the public with the opportunity to comment through the use of such electronic communication means at such meetings at the point when public comment is customarily received; and

3. Shall otherwise comply with the provisions of this chapter.

No cause of action shall arise against a state public body for accidental or involuntary loss of audio or video signal or inability of the public to comment through the electronic communications means described in this subsection.

~~B.~~ C. No 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 and 2.2-3708.3 or as may be specifically provided in Title 54.1 for the summary suspension of professional licenses.

~~C.~~ D. Every public body shall give notice of the date, time, ~~and~~ location, and remote location, if required, of its meetings by:

1. Posting such notice on its official public government website, if any;

2. Placing such notice in a prominent public location at which notices are regularly posted; and

3. Placing such notice at the office of the clerk of the public body or, in the case of a public body that has no clerk, at the office of the chief administrator.

All state public bodies subject to the provisions of this chapter shall also post notice of their meetings on a central, publicly available electronic calendar maintained by the Commonwealth. Publication of meeting notices by electronic means by other public bodies shall be encouraged.

The notice shall be posted at least three working days prior to the meeting.

~~D.~~ E. Notice, reasonable under the circumstance, of special, emergency, or continued meetings shall be given contemporaneously with the notice provided to the members of the public body conducting the meeting.

~~E.~~ F. Any person may annually file a written request for notification with a public body. The request shall include the requester's name, address, zip code, daytime telephone number, electronic mail address, if available, and organization, if any. The public body receiving such request shall provide notice of all meetings directly to each such person. Without objection by the person, the public body may provide electronic notice of all meetings in response to such requests.

~~F.~~ G. At least one copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished 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. The proposed agendas for meetings of state public bodies where at least one member has been appointed by the Governor shall state whether or not public comment will be received at the meeting and, if so, the approximate point during the meeting when public comment will be received.

~~G.~~ H. Any person may photograph, film, record, or otherwise reproduce any portion of a meeting required to be open. The public body conducting the meeting may adopt rules governing the placement and use of equipment necessary for broadcasting, photographing, filming, or recording a meeting to prevent interference with the proceedings, but shall not prohibit or otherwise prevent any person from photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be open. No public body shall conduct a meeting required to be open in any building or facility where such recording devices are prohibited.

~~H.~~ I. Minutes shall be taken at all open meetings. However, minutes shall not be required to be taken at deliberations of (i) standing and other committees of the General Assembly; (ii) legislative interim study commissions and committees, including the Virginia Code Commission; (iii) study committees or

commissions appointed by the Governor; or (iv) study commissions or study committees, or any other committees or subcommittees appointed by the governing bodies or school boards of counties, cities, and towns, except where the membership of any such commission, committee, or subcommittee includes a majority of the governing body of the county, city, or town or school board.

Minutes, including draft minutes, and all other records of open meetings, including audio or audio/visual records shall be deemed public records and subject to the provisions of this chapter.

Minutes shall be in writing and shall include (a) the date, time, and location of the meeting; (b) the members of the public body recorded as present and absent; and (c) a summary of the discussion on matters proposed, deliberated, or decided, and a record of any votes taken. In addition, for electronic communication meetings conducted in accordance with § 2.2-3708.2 or 2.2-3708.3, minutes shall include (1) the identity of the members of the public body who participated in the meeting through electronic communication means, (2) the identity of the members of the public body who were physically assembled at one physical location, and (3) the identity of the members of the public body who were not present at the location identified in clause (2) but who monitored such meeting through electronic communication means.

§ 2.2-3707.2. Posting of minutes for local public bodies.

Except as provided in subsection *H 1* of § 2.2-3707, any local public body subject to the provisions of this chapter shall post minutes of its meetings on its official public government website, if any, within seven working days of final approval of the minutes.

If a local public body does not own or maintain an official public government website, such public body shall make copies of all meeting minutes available no later than seven working days after final approval of the minutes (i) at a prominent public location in which meeting notices are regularly posted pursuant to subdivision *C D 2* of § 2.2-3707; (ii) at the office of the clerk of the public body; or (iii) in the case of a public body that has no clerk, at the office of the chief administrator.

§ 15.2-1416. Regular meetings.

A. The governing body shall assemble at a public place as the governing body may prescribe, in regular session in January for counties and in July for cities and towns. Future meetings shall be held on such days as may be prescribed by resolution of the governing body but in no event shall less than six meetings be held in each fiscal year.

B. The days, times and places of regular meetings to be held during the ensuing months shall be established at the first meeting which meeting may be referred to as the annual or organizational meeting; however, if the governing body subsequently prescribes any public place other than the initial public meeting place, or any day or time other than that initially established, as a meeting day, place or time, the governing body shall pass a resolution as to such future meeting day, place or time. The governing body shall cause a copy of such resolution to be posted on the door of the courthouse or the initial public meeting place and inserted in a newspaper having general circulation in the county or municipality at least seven days prior to the first such meeting at such other day, place or time. Should the day established by the governing body as the regular meeting day fall on any legal holiday, the meeting shall be held on the next following regular business day, without action of any kind by the governing body.

At its annual meeting the governing body may fix the day or days to which a regular meeting shall be continued if the chairman or mayor, or vice-chairman or vice-mayor if the chairman or mayor is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the regular meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised shall be conducted at the continued meeting and no further advertisement is required.

C. Regular meetings may be adjourned from day to day or from time to time or from place to place, not beyond the time fixed for the next regular meeting, until the business before the governing body is completed. Notice of any regular meeting continued under this section shall be reasonable under the circumstances and be given as provided in subsection *D E* of § 2.2-3707.

D. The governing body shall provide members of the general public with the opportunity for public comment during a regular meeting at least quarterly.

E. Notwithstanding the provisions of this section, any city or town that holds an organizational meeting in compliance with its charter or code shall be deemed to be in compliance with this section.

§ 15.2-2308.1. Boards of zoning appeals, ex parte communications, proceedings.

A. The non-legal staff of the governing body may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney

are all invited.

B. Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under § 15.2-2314, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to § 2.2-3704. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection F G of § 2.2-3707.

C. For the purposes of this section, "non-legal staff of the governing body" means any staff who is not in the office of the attorney for the locality, or for the board, or who is appointed by special law or pursuant to § 15.2-1542. Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.

D. This section shall not apply to cases where an application for a special exception has been filed pursuant to subdivision 6 of § 15.2-2309.

§ 23.1-1303. Governing boards; duties.

A. For purposes of this section, "intellectual property" means (i) a potentially patentable machine, article of manufacture, composition of matter, process, or improvement in any of those; (ii) an issued patent; (iii) a legal right that inheres in a patent; or (iv) anything that is copyrightable.

B. The governing board of each public institution of higher education shall:

1. Adopt and post conspicuously on its website bylaws for its own governance, including provisions that (i) establish the requirement of transparency, to the extent required by law, in all board actions; (ii) describe the board's obligations under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), as set forth in subdivision B 10 of § 23.1-1301, including the requirements that (a) the board record minutes of each open meeting and post the minutes on the board's website, in accordance with subsection H I of § 2.2-3707 and § 2.2-3707.1, (b) discussions and actions on any topic not specifically exempted by § 2.2-3711 be held in an open meeting, (c) the board give public notice of all meetings, in accordance with subsection E D of § 2.2-3707, and (d) any action taken in a closed meeting be approved in an open meeting before it can have any force or effect, in accordance with subsection B of § 2.2-3711; and (iii) require that the board invite the Attorney General's appointee or representative to all meetings of the board, executive committee, and board committees;

2. Establish and maintain on the institution's website (i) a listing of all board members, including the name of the Governor who made each appointment and the date of each appointment; (ii) a listing of all committees created by the board and the membership of each committee; (iii) a schedule of all upcoming meetings of the full board and its committees and instructions for the public to access such meetings; (iv) an archive of agendas and supporting materials for each meeting of the governing board and its committees that was held; and (v) an email address or email addresses that allow board members to receive public communications pertaining to board business;

3. Establish regulations or institution policies for the acceptance and assistance of students that include provisions (i) that specify that individuals who have knowingly and willfully failed to meet the federal requirement to register for the selective service are not eligible to receive any state direct student assistance, (ii) that specify that the accreditation status of a public high school in the Commonwealth shall not be considered in making admissions determinations for students who have earned a diploma pursuant to the requirements established by the Board of Education, and (iii) relating to the admission of certain graduates of comprehensive community colleges as set forth in § 23.1-907;

4. Assist the Council in enforcing the provisions relating to eligibility for financial aid;

5. Notwithstanding any other provision of state law, establish policies and procedures requiring the notification of the parent of a dependent student when such student receives mental health treatment at the institution's student health or counseling center and such treatment becomes part of the student's educational record in accordance with the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and may be disclosed without prior consent as authorized by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations (34 C.F.R. Part 99). Such notification shall only be required if it is determined that there exists a substantial likelihood that, as a result of mental illness the student will, in the near future, (i) cause serious physical harm to himself or others as evidenced by recent behavior or any other relevant information or (ii) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs. However, notification may be withheld if any person licensed to diagnose and treat mental, emotional, or behavioral disorders by a health regulatory board within the Department of Health Professions who is treating the student has made a part of the student's record a written statement that, in the exercise of his professional judgment, the notification would be reasonably likely to cause substantial harm to the student or another person. No public institution of higher education or employee of a public institution of higher education making a disclosure pursuant to this subsection is civilly liable for any harm resulting from such disclosure unless such disclosure constitutes gross negligence or willful misconduct

by the institution or its employees;

6. Establish policies and procedures requiring the release of the educational record of a dependent student, as defined by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g), to a parent at his request;

7. Establish programs to seek to ensure that all graduates have the technology skills necessary to compete in the twenty-first century and that all students matriculating in teacher-training programs receive instruction in the effective use of educational technology;

8. Establish policies for the discipline of students who participate in varsity intercollegiate athletics, including a provision requiring an annual report by the administration of the institution to the governing board regarding enforcement actions taken pursuant to such policies;

9. In addition to all meetings prescribed in Chapters 14 (§ 23.1-1400 et seq.) through 29 (§ 23.1-2900 et seq.), meet with the chief executive officer of the institution at least once annually, in a closed meeting pursuant to subdivision A 1 of § 2.2-3711 and deliver an evaluation of the chief executive officer's performance. Any change to the chief executive officer's employment contract during any such meeting or any other meeting of the board shall be made only by a vote of the majority of the board's members;

10. If human research, as defined in § 32.1-162.16, is conducted at the institution, adopt regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. Such regulations shall require the human research committee to submit to the Governor, the General Assembly, and the chief executive officer of the institution or his designee at least annually a report on the human research projects reviewed and approved by the committee and require the committee to report any significant deviations from approved proposals;

11. Submit and make publicly available on the institution's website the annual financial statements for the fiscal year ending the preceding June 30 and the accounts and status of any ongoing capital projects to the Auditor of Public Accounts for the audit of such statements pursuant to § 30-133;

12. No later than December 1 of each year, report to the Council and make publicly available on the institution's website (i) the value of investments as reflected on the Statement of Net Position as of June 30 of the previous fiscal year, excluding any funds derived from endowment donations, endowment income, or other private philanthropy; (ii) the cash earnings on such balances in the previous fiscal year; and (iii) the use of the cash earnings on such balances. In the event that the commitment of any such investment earnings spans more than one fiscal year, the report shall reflect the commitments made in each future fiscal year. The reports of the Boards of Visitors of Virginia Commonwealth University and the University of Virginia shall exclude the value of and earnings on any investments held by the Virginia Commonwealth University Health System Authority and the University of Virginia Medical Center, respectively. As used in this subdivision, "investments" includes all short-term, long-term, liquid, and illiquid Statement of Net Position accounts, and subaccounts thereof, in which moneys have been invested in securities;

13. Submit to the General Assembly and the Governor and make publicly available on the institution's website an annual executive summary of its interim activity and work no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website;

14. Make available to any interested party upon request a copy of the portion of the most recent report of the Uniform Crime Reporting Section of the Department of State Police entitled "Crime in Virginia" pertaining to institutions of higher education;

15. Adopt policies or institution regulations regarding the ownership, protection, assignment, and use of intellectual property and provide a copy of such policies or institution regulations to the Governor and the Joint Commission on Technology and Science. All employees, including student employees, of public institutions of higher education are bound by the intellectual property policies or institution regulations of the institution employing them;

16. Adopt policies that are supportive of the intellectual property rights of matriculated students who are not employed by such institution; and

17. Solicit the input of representatives of the institution's faculty senate or its equivalent (i) at least twice per academic year on topics of general interest to the faculty and (ii) in advance of decisions to be made on the search for the institution's new chief executive officer.