



STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

SCHEV Report on a Minimal Uniform Standard to Improve Transparency of College and University Governing Boards

I. Background/Legislative History

HB 2120 (Kearney) was enacted in the 2021 General Assembly (Special Session I). The legislation amended three sections of the *Code of Virginia* that set forth the statutory responsibilities and duties of the governing boards for the public institutions of higher education. The intent was to increase the transparency of the 14 Boards of Visitors and the State Board for Community Colleges by ensuring public access to information about each board - *including eleven new requirements for posting specific information to each institutional website* - and the ability to witness a board meeting virtually.

The mandate that each board ensure real-time electronic access to its meetings was a priority expressed by proponents throughout the legislative process. However, during the 2021 legislative session, assessing the best practices and forming a consensus about what language should be enshrined in the *Code* was difficult. In early 2021, public bodies were still meeting remotely under the Governor's orders regarding the public health emergency of the COVID-19 pandemic. Many unknowns existed about how public meetings laws would be modified in the post-pandemic future after the lessons learned from the forced remote-meeting protocol had been fully digested.

Two enactment clauses assigned responsibility to the State Council of Higher Education for Virginia (SCHEV) to facilitate more-informed implementation of the legislation:

1. That the State Council of Higher Education for Virginia, in consultation with the Virginia Freedom of Information Advisory Council, shall work with the public institutions of higher education in the Commonwealth and with technology experts to develop a minimal uniform standard, to the extent practicable, for providing the public with real-time electronic access to meetings of the governing boards of public institutions of higher education. Such minimal uniform standard shall be implemented by each public institution of higher education no later than July 1, 2022, and any policy changes necessary to effectuate such implementation shall be recommended to the Chairmen of the House Committee on Education and the Senate Committee on Education and Health no later than November 1, 2021.
2. That pursuant to the provisions of subdivision 15 of § 23.1-203 of the *Code of Virginia*, the State Council of Higher Education for Virginia shall consider updates to § 23.1-1304 of the *Code of Virginia* and to other provisions of law to address changes being made by public institutions of higher education whose governing boards hold virtual meetings and the institutions' efforts to improve public transparency through real-time electronic access to such meetings and shall report any recommendations to the governing board of each public institution of higher education and to the General Assembly no later than November 1, 2021.

Full text of the bill: <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0447>

II. Process

To fulfill its assignments in the legislation's enactment clauses, SCHEV assembled a workgroup of individuals with professional backgrounds and job duties that rendered them particularly qualified to advise about board responsibilities, operating practices and procedures and available resources. The workgroup included four legislative

liaisons from public institutions, four board professionals (chief administrative staff to their institution's board), five SCHEV staff, the Secretary of the Commonwealth, the Deputy Secretary of Education, and the Director of the FOIA Council.

The workgroup met seven times between April 2021 and November 2021, focusing its study on two aspects of the new legislation:

- 1) Timely compliance with the sections of the law that became effective on July 1; and
- 2) Development of the "minimal uniform standard" for public access to board meetings.

The workgroup verified compliance with the July 1 items by surveying the board professional of each institution about the new items that are required to be posted electronically, as well as whether the faculty consultation provisions were in place. In addition, an independent review by SCHEV staff of each institution's website verified that all were in compliance with the posted items.

Toward development of a minimal uniform standard, the workgroup invited stakeholders to provide input and consulted with the patron, Delegate Mark Keam, several times throughout its study. The workgroup heard from: the Partners for College Affordability and Public Trust; the Virginia Coalition for Open Government; and the Virginia Press Association regarding expectations about "real-time electronic access" to meetings. In addition to feedback related specifically to board meetings, some stakeholders said that even though the legislation applied only to the governing boards of institutions of higher education, it also could be applied to other state public bodies. After forming draft recommendations in October, the workgroup shared the language with the same groups, with an invitation to comment further via email.

III. Recommendations:

First Enactment Clause - Minimal Uniform Standard:

- I. Each institution of higher education shall provide the public with real-time electronic access to regularly-scheduled meetings of its full governing board. An exception shall be made for a meeting, tour or gathering that takes place outside of the usual location of the board meeting. The board shall include the reason for the exception in its public announcement and in the minutes of the meeting. Such access shall not be required for meetings of committees or subcommittees of the board.
- II. "Real-time electronic access" shall mean that members of the public can witness the meeting from the beginning until adjournment of any part of the meeting that is not a "closed meeting" pursuant to *Virginia Code* § 2.2 - 3711.
- III. Access shall be provided through video or audio livestream. Live-streamed video must comply with the *Americans with Disabilities Act* (ADA) and Section 508 of the *Rehabilitation Act of 1973*.
- IV. Each institution shall adopt and post on its governing board's website its meeting access policy and relevant links through which the public can obtain real-time electronic access to meetings of its governing board.

Second Enactment Clause – Updates to Code § 23.1-1304 or other provisions of law.

The workgroup did not identify necessary updates to *Virginia Code* § 23.1-1304 or other provisions of law related to governing boards holding virtual meetings and efforts to improve transparency. Therefore, SCHEV makes no recommendations pursuant to the second enactment clause.

IV. Other Considerations:

The "minimal uniform standard" is meant to be a "jumping-off point," intended to provide the flexibility needed by the institutions, which vary widely in terms of the levels of resources each can devote. Implementation of the requirement to provide "real-time electronic access" to meetings will create financial burdens on all institutions, but some will be impacted more than others. SCHEV expects that many institutions are

already prepared to go beyond these recommendations and that such institutions can act as a resource to other institutions as practices continue to improve.

Given the rapidly changing landscape of streaming technology, SCHEV does not recommend that the *Code* or the guidelines specify particular technologies to be used by each institution to comply with the electronic access mandate. The workgroup identified some best practices for the conduct of hybrid meetings. However, such practices continue to evolve. By the date of this report, boards are just resuming in-person meetings and are working out issues associated with continuing to provide remote access to the public.

SCHEV concludes that the most efficient and effective means to address the topics of possible technological solutions and best practices is through annual educational programming for members of the 14 Boards of Visitors and the State Board for Community Colleges. In addition, SCHEV maintains a coordinating relationship with the institutions' board professionals-- the staff who are most directly responsible for managing meeting logistics and compliance with *FOIA*. Thus, SCHEV possesses the ability and capacity to engage in regular dialogue with them about issues of implementation and can communicate updates about new and emerging practices.