

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL ****10/12/2021 SAdkins4 text: A BILL ct: Per the note in the shuck, there are x-refs to § 2.2-3708.2**
2 **in the Code that need to be addressed in the next draft of this LD.**** to amend and reenact §§ 2.2-
3 3701, 2.2-3707, 2.2-3707.01, 2.2-3708.2, and 2.2-3714 of the Code of Virginia and to amend the
4 Code of Virginia by adding a section numbered 2.2-3708.3, relating to meetings conducted by
5 electronic communication means under the Virginia Freedom of Information Act.

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That §§ 2.2-3701, 2.2-3707, 2.2-3707.01, 2.2-3708.2, and 2.2-3714 of the Code of Virginia are**
8 **amended and reenacted and that the Code of Virginia is amended by adding a section numbered**
9 **2.2-3708.3 as follows:**

10 **§ 2.2-3701. Definitions.**

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

12 "All-virtual public meeting" means a public meeting (i) conducted by a public body using
13 electronic communication means, (ii) during which all members of the public body who participate do so
14 remotely rather than being assembled in one physical location, and (iii) to which public access is provided
15 through electronic communications means.

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

17 "Electronic communication" means the use of technology having electrical, digital, magnetic,
18 wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

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

21 "Hybrid public meeting" means a public meeting where (i) one or more members of the public
22 body who participate do so remotely rather than being assembled in one physical location, (ii) at least a
23 quorum of the members of the public body are assembled in one physical location, and (iii) public access
24 is provided both in person at a physical location and through electronic communication means.

25 "Information" as used in the exclusions established by §§ 2.2-3705.1 through 2.2-3705.7, means
26 the content within a public record that references a specifically identified subject matter, and shall not be
27 interpreted to require the production of information that is not embodied in a public record.

28 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or
29 through electronic communication means pursuant to § 2.2-3708.2 or 2.2-3708.3, as a body or entity, or
30 as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the
31 constituent membership, wherever held, with or without minutes being taken, whether or not votes are
32 cast, of any public body. Neither the gathering of employees of a public body nor the gathering or
33 attendance of two or more members of a public body (a) at any place or function where no part of the
34 purpose of such gathering or attendance is the discussion or transaction of any public business, and such
35 gathering or attendance was not called or prearranged with any purpose of discussing or transacting any
36 business of the public body, or (b) at a public forum, candidate appearance, or debate, the purpose of
37 which is to inform the electorate and not to transact public business or to hold discussions relating to the
38 transaction of public business, even though the performance of the members individually or collectively
39 in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be
40 deemed a "meeting" subject to the provisions of this chapter.

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

42 "Public body" means any legislative body, authority, board, bureau, commission, district, or
43 agency of the Commonwealth or of any political subdivision of the Commonwealth, including counties,
44 cities, and towns ~~and counties~~, municipal councils, governing bodies of counties, school boards, and
45 planning commissions; governing boards of public institutions of higher education; and other
46 organizations, corporations, or agencies in the Commonwealth supported wholly or principally by public
47 funds. It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its
48 board of directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any
49 committee, subcommittee, or other entity however designated, of the public body created to perform
50 delegated functions of the public body or to advise the public body. It shall not exclude any such

51 committee, subcommittee, or entity because it has private sector or citizen members. Corporations
52 organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

53 For the purposes of the provisions of this chapter applicable to access to public records,
54 constitutional officers and private police departments as defined in § 9.1-101 shall be considered public
55 bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose
56 public records as other custodians of public records.

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

62 "Regional public body" means a unit of government organized as provided by law within defined
63 boundaries, as determined by the General Assembly, which unit includes two or more localities.

64 "Remote participation" means participation in a public meeting by an individual member of a
65 public body using electronic communication means.

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

69 "Trade secret" means the same as that term is defined in the Uniform Trade Secrets Act (§ 59.1-
70 336 et seq.).

71 **§ 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.**

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

73 B. No meeting shall be conducted through telephonic, video, electronic, or other electronic
74 communication means where the members are not physically assembled to discuss or transact public
75 business, except as provided in ~~§§ 2.2-3708.2 or~~ 2.2-3708.3 or as may be specifically provided in
76 Title 54.1 for the summary suspension of professional licenses.

77 C. Every public body shall give notice of the date, time, and location of its meetings by:

- 78 1. Posting such notice on its official public government website, if any;
79 2. Placing such notice in a prominent public location at which notices are regularly posted; and
80 3. Placing such notice at the office of the clerk of the public body or, in the case of a public body
81 that has no clerk, at the office of the chief administrator.

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

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

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

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

94 F. At least one copy of the proposed agenda and all agenda packets and, unless exempt, all
95 materials furnished to members of a public body for a meeting shall be made available for public
96 inspection at the same time such documents are furnished to the members of the public body. The proposed
97 agendas for meetings of state public bodies where at least one member has been appointed by the Governor
98 shall state whether or not public comment will be received at the meeting and, if so, the approximate point
99 during the meeting when public comment will be received.

100 G. Any person may photograph, film, record, or otherwise reproduce any portion of a meeting
101 required to be open. The public body conducting the meeting may adopt rules governing the placement
102 and use of equipment necessary for broadcasting, photographing, filming, or recording a meeting to
103 prevent interference with the proceedings, but shall not prohibit or otherwise prevent any person from
104 photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be open.

105 No public body shall conduct a meeting required to be open in any building or facility where such
106 recording devices are prohibited.

107 H. Minutes shall be ~~recorded~~ taken at all open meetings. However, minutes shall not be required
108 to be taken at deliberations of (i) standing and other committees of the General Assembly; (ii) legislative
109 interim study commissions and committees, including the Virginia Code Commission; (iii) study
110 committees or commissions appointed by the Governor; or (iv) study commissions or study committees,
111 or any other committees or subcommittees appointed by the governing bodies or school boards of counties,
112 cities₂ and towns, except where the membership of any such commission, committee₂ or subcommittee
113 includes a majority of the governing body of the county, city₂ or town or school board.

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

116 Minutes shall be in writing and shall include (a) the date, time, and location of the meeting; (b) the
117 members of the public body recorded as present and absent; and (c) a summary of the discussion on matters
118 proposed, deliberated₂ or decided, and a record of any votes taken. In addition, for electronic
119 communication meetings conducted in accordance with § 2.2-3708.2 or 2.2-3708.3, ~~minutes of state~~
120 ~~public bodies~~ shall include (1) the identity of the members of the public body ~~at each remote location~~
121 ~~identified in the notice~~ who participated in the meeting through electronic communication means₂; (2) the
122 identity of the members of the public body who were physically assembled at ~~the primary or central~~
123 ~~meeting one physical~~ location, if the meeting was a hybrid public meeting; and (3) the identity of the
124 members of the public body who were not present at the ~~locations~~ location identified in ~~clauses (1) and~~
125 clause (2) but who monitored such meeting through electronic communication means.

126 **§ 2.2-3707.01. Meetings of the General Assembly.**

127 A. Except as provided in subsection B, public access to any meeting of the General Assembly or
128 a portion thereof shall be governed by rules established by the Joint Rules Committee and approved by a
129 majority vote of each house at the next regular session of the General Assembly. At least 60 days before
130 the adoption of such rules, the Joint Rules Committee shall (i) hold regional public hearings on such

131 proposed rules and (ii) provide a copy of such proposed rules to the Virginia Freedom of Information
132 Advisory Council.

133 B. Floor sessions of either house of the General Assembly; meetings, including work sessions, of
134 any standing or interim study committee of the General Assembly; meetings, including work sessions, of
135 any subcommittee of such standing or interim study committee; and joint committees of conference of the
136 General Assembly; or a quorum of any such committees or subcommittees, shall be open and governed
137 by this chapter.

138 C. Meetings of the respective political party caucuses of either house of the General Assembly,
139 including meetings conducted by telephonic or other electronic communication means, without regard to
140 (i) whether the General Assembly is in or out of regular or special session or (ii) whether such caucuses
141 invite staff or guests to participate in their deliberations, shall not be deemed meetings for the purposes of
142 this chapter.

143 D. No regular, special, or reconvened session of the General Assembly held pursuant to Article
144 IV, Section 6 of the Constitution of Virginia shall be conducted using electronic communication means
145 pursuant to § 2.2-3708.2 or 2.2-3708.3.

146 **§ 2.2-3708.2. Meetings held through electronic communication means during declared states**
147 **of emergency.**

148 ~~A. The following provisions apply to all public bodies:~~

149 ~~1. Subject to the requirements of subsection C, all public bodies may conduct any meeting wherein~~
150 ~~the public business is discussed or transacted through electronic communication means if, on or before~~
151 ~~the day of a meeting, a member of the public body holding the meeting notifies the chair of the public~~
152 ~~body that:~~

153 ~~a. Such member is unable to attend the meeting due to (i) a temporary or permanent disability or~~
154 ~~other medical condition that prevents the member's physical attendance or (ii) a family member's medical~~
155 ~~condition that requires the member to provide care for such family member, thereby preventing the~~
156 ~~member's physical attendance; or~~

157 ~~b. Such member is unable to attend the meeting due to a personal matter and identifies with~~
158 ~~specificity the nature of the personal matter. Participation by a member pursuant to this subdivision b is~~
159 ~~limited each calendar year to two meetings or 25 percent of the meetings held per calendar year rounded~~
160 ~~up to the next whole number, whichever is greater.~~

161 ~~2. If participation by a member through electronic communication means is approved pursuant to~~
162 ~~subdivision 1, the public body holding the meeting shall record in its minutes the remote location from~~
163 ~~which the member participated; however, the remote location need not be open to the public. If~~
164 ~~participation is approved pursuant to subdivision 1 a, the public body shall also include in its minutes the~~
165 ~~fact that the member participated through electronic communication means due to (i) a temporary or~~
166 ~~permanent disability or other medical condition that prevented the member's physical attendance or (ii) a~~
167 ~~family member's medical condition that required the member to provide care for such family member,~~
168 ~~thereby preventing the member's physical attendance. If participation is approved pursuant to subdivision~~
169 ~~1 b, the public body shall also include in its minutes the specific nature of the personal matter cited by the~~
170 ~~member.~~

171 ~~If a member's participation from a remote location pursuant to subdivision 1 b is disapproved~~
172 ~~because such participation would violate the policy adopted pursuant to subsection C, such disapproval~~
173 ~~shall be recorded in the minutes with specificity.~~

174 ~~3.~~ Any public body, or any joint meetings thereof, may meet by electronic communication means
175 without a quorum of the public body physically assembled at one location when the Governor has declared
176 a state of emergency in accordance with § 44-146.17 or the locality in which the public body is located
177 has declared a local state of emergency pursuant to § 44-146.21, provided that (i) the catastrophic nature
178 of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and
179 (ii) the purpose of the meeting is to provide for the continuity of operations of the public body or the
180 discharge of its lawful purposes, duties, and responsibilities. The public body convening a meeting in
181 accordance with this ~~subdivision~~ section shall:

182 ~~a-1.~~ Give public notice using the best available method given the nature of the emergency, which
183 notice shall be given contemporaneously with the notice provided to members of the public body
184 conducting the meeting;

185 ~~b-2.~~ Make arrangements for public access to such meeting through electronic communication
186 means, including videoconferencing if already used by the public body;

187 ~~e-3.~~ Provide the public with the opportunity to comment at those meetings of the public body
188 when public comment is customarily received; and

189 ~~d-4.~~ Otherwise comply with the provisions of this chapter.

190 The nature of the emergency, the fact that the meeting was held by electronic communication
191 means, and the type of electronic communication means by which the meeting was held shall be stated in
192 the minutes.

193 The provisions of this ~~subdivision 3~~ section shall be applicable only for the duration of the
194 emergency declared pursuant to § 44-146.17 or 44-146.21.

195 ~~B. The following provisions apply to regional public bodies:~~

196 ~~1. Subject to the requirements in subsection C, regional public bodies may also conduct any~~
197 ~~meeting wherein the public business is discussed or transacted through electronic communication means~~
198 ~~if, on the day of a meeting, a member of a regional public body notifies the chair of the public body that~~
199 ~~such member's principal residence is more than 60 miles from the meeting location identified in the~~
200 ~~required notice for such meeting.~~

201 ~~2. If participation by a member through electronic communication means is approved pursuant to~~
202 ~~this subsection, the public body holding the meeting shall record in its minutes the remote location from~~
203 ~~which the member participated; however, the remote location need not be open to the public.~~

204 ~~If a member's participation from a remote location is disapproved because such participation would~~
205 ~~violate the policy adopted pursuant to subsection C, such disapproval shall be recorded in the minutes~~
206 ~~with specificity.~~

207 ~~C. Participation by a member of a public body in a meeting through electronic communication~~
208 ~~means pursuant to subdivisions A 1 and 2 and subsection B shall be authorized only if the following~~
209 ~~conditions are met:~~

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

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

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

219 ~~D. The following provisions apply to state public bodies:~~

220 ~~1. Except as provided in subsection D of § 2.2-3707.01, state public bodies may also conduct any~~
221 ~~meeting wherein the public business is discussed or transacted through electronic communication means,~~
222 ~~provided that (i) a quorum of the public body is physically assembled at one primary or central meeting~~
223 ~~location, (ii) notice of the meeting has been given in accordance with subdivision 2, and (iii) members of~~
224 ~~the public are provided a substantially equivalent electronic communication means through which to~~
225 ~~witness the meeting. For the purposes of this subsection, "witness" means observe or listen.~~

226 ~~If a state public body holds a meeting through electronic communication means pursuant to this~~
227 ~~subsection, it shall also hold at least one meeting annually where members in attendance at the meeting~~
228 ~~are physically assembled at one location and where no members participate by electronic communication~~
229 ~~means.~~

230 ~~2. Notice of any regular meeting held pursuant to this subsection shall be provided at least three~~
231 ~~working days in advance of the date scheduled for the meeting. Notice, reasonable under the circumstance,~~
232 ~~of special, emergency, or continued meetings held pursuant to this section shall be given~~
233 ~~contemporaneously with the notice provided to members of the public body conducting the meeting. For~~

234 ~~the purposes of this subsection, "continued meeting" means a meeting that is continued to address an~~
235 ~~emergency or to conclude the agenda of a meeting for which proper notice was given.~~

236 ~~The notice shall include the date, time, place, and purpose for the meeting; shall identify the~~
237 ~~primary or central meeting location and any remote locations that are open to the public pursuant to~~
238 ~~subdivision 4; shall include notice as to the electronic communication means by which members of the~~
239 ~~public may witness the meeting; and shall include a telephone number that may be used to notify the~~
240 ~~primary or central meeting location of any interruption in the telephonic or video broadcast of the meeting.~~
241 ~~Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action~~
242 ~~at the meeting until repairs are made and public access is restored.~~

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

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

250 ~~5. If access to remote locations is afforded, (i) all persons attending the meeting at any of the~~
251 ~~remote locations shall be afforded the same opportunity to address the public body as persons attending~~
252 ~~at the primary or central location and (ii) a copy of the proposed agenda and agenda packets and, unless~~
253 ~~exempt, all materials that will be distributed to members of the public body for the meeting shall be made~~
254 ~~available for inspection by members of the public attending the meeting at any of the remote locations at~~
255 ~~the time of the meeting.~~

256 ~~6. The public body shall make available to the public at any meeting conducted in accordance with~~
257 ~~this subsection a public comment form prepared by the Virginia Freedom of Information Advisory~~
258 ~~Council in accordance with § 30-179.~~

259 ~~7. Minutes of all meetings held by electronic communication means shall be recorded as required~~
260 ~~by § 2.2-3707. Votes taken during any meeting conducted through electronic communication means shall~~

261 ~~be recorded by name in roll call fashion and included in the minutes. For emergency meetings held by~~
262 ~~electronic communication means, the nature of the emergency shall be stated in the minutes.~~

263 ~~8. Any authorized state public body that meets by electronic communication means pursuant to~~
264 ~~this subsection shall make a written report of the following to the Virginia Freedom of Information~~
265 ~~Advisory Council by December 15 of each year:~~

266 ~~a. The total number of meetings held that year in which there was participation through electronic~~
267 ~~communication means;~~

268 ~~b. The dates and purposes of each such meeting;~~

269 ~~c. A copy of the agenda for each such meeting;~~

270 ~~d. The primary or central meeting location of each such meeting;~~

271 ~~e. The types of electronic communication means by which each meeting was held;~~

272 ~~f. If possible, the number of members of the public who witnessed each meeting through electronic~~
273 ~~communication means;~~

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

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

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

283 ~~j. A summary of any public comment received about the process of conducting a meeting through~~
284 ~~electronic communication means; and~~

285 ~~k. A written summary of the public body's experience conducting meetings through electronic~~
286 ~~communication means, including its logistical and technical experience.~~

287 ~~E. Nothing in this section shall be construed to prohibit the use of interactive audio or video means~~
288 ~~to expand public participation.~~

289 **§ 2.2-3708.3. Meetings held through electronic communication means.**

290 A. Public bodies are encouraged to use hybrid public meetings to provide public access in person
291 and through electronic communications means, to use interactive audio or video to expand observation of
292 meetings, and to provide avenues for public comment at public meetings when public comment is
293 customarily received, which may include public comments made in person, by electronic communication
294 means, or both.

295 B. Individual members of a public body may use remote participation instead of attending a public
296 meeting in person if, in advance of the public meeting, the public body has adopted a policy as described
297 in subsection E and the member notifies the public body chair that:

298 1. The member has a temporary or permanent disability or other medical condition that prevents
299 the member's physical attendance;

300 2. A medical condition of a member of the member's family requires the member to provide care
301 that prevents the member's physical attendance;

302 3. The member's principal residence is more than 60 miles from the meeting location identified in
303 the required notice for such meeting; or

304 4. The member is unable to attend the meeting due to a personal matter and identifies with
305 specificity the nature of the personal matter. However, the member may not use remote participation due
306 to personal matters more than two meetings per calendar year or 25 percent of the meetings held per
307 calendar year rounded up to the next whole number, whichever is greater.

308 If participation by a member through electronic communication means is approved pursuant to this
309 subsection, the public body holding the meeting shall record in its minutes the remote location from which
310 the member participated; however, the remote location need not be open to the public and may be
311 identified in the minutes by a general description. If participation is approved pursuant to subdivision 1 or
312 2, the public body shall also include in its minutes the fact that the member participated through electronic
313 communication means due to a (i) temporary or permanent disability or other medical condition that

314 prevented the member's physical attendance or (ii) family member's medical condition that required the
315 member to provide care for such family member, thereby preventing the member's physical attendance. If
316 participation is approved pursuant to subdivision 3, the public body shall also include in its minutes the
317 fact that the member participated through electronic communication means due to the distance between
318 the member's principal residence and the meeting location. If participation is approved pursuant to
319 subdivision 4, the public body shall also include in its minutes the specific nature of the personal matter
320 cited by the member.

321 If a member's participation from a remote location pursuant to this subsection is disapproved
322 because such participation would violate the policy adopted pursuant to subsection E, such disapproval
323 shall be recorded in the minutes with specificity.

324 C. Any public body may hold all-virtual public meetings, provided that the public body follows
325 the other requirements in this chapter for meetings, the public body has adopted a policy as described in
326 subsection D, and:

327 1. The fact that the meeting will be an all-virtual public meeting is included in the required meeting
328 notice;

329 2. Public access to the all-virtual public meeting is provided via electronic communications means;

330 3. The electronic communication means used allows the public to hear all members of the public
331 body participating in the all-virtual public meeting and, when audio-visual technology is available, to see
332 the members of the public body as well;

333 4. A phone number or other live contact information is provided to alert the public body if the
334 audio or video transmission of the meeting provided by the public body fails, the public body monitors
335 such designated means of communication during the meeting, and the public body takes a recess until
336 public access is restored if the transmission fails for the public;

337 5. A copy of the proposed agenda and all agenda packets and, unless exempt, all materials
338 furnished to members of a public body for a meeting are made available to the public in electronic format
339 at the same time that such materials are provided to members of the public body;

340 6. The public is afforded the opportunity to comment through electronic means, including by way
341 of written comments, at those public meetings when public comment is customarily received;

342 7. No more than two members of the public body are together in any one remote location unless
343 that remote location is open to the public to physically access it;

344 8. If a closed session is held during an all-virtual public meeting, transmission of the meeting to
345 the public resumes before the public body votes to certify the closed meeting as required by subsection D
346 of § 2.2-3712;

347 9. The public body does not convene an all-virtual public meeting more than two times per calendar
348 year, or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever
349 is greater; and

350 10. Minutes of all-virtual public meetings held by electronic communication means are taken as
351 required by § 2.2-3707 and include the fact that the meeting was held by electronic communication means
352 and the type of electronic communication means by which the meeting was held. If a member's
353 participation from a remote location pursuant to this subsection is disapproved because such participation
354 would violate the policy adopted pursuant to subsection D, such disapproval shall be recorded in the
355 minutes with specificity.

356 D. Before a public body uses all-virtual public meetings as described in subsection C or allows
357 members to use remote participation as described in subsection B, the public body must first adopt a
358 policy, by recorded vote at a public meeting, that shall be applied strictly and uniformly, without
359 exception, to the entire membership and without regard to the identity of the member requesting remote
360 participation or the matters that will be considered or voted on at the meeting. The policy shall:

361 1. Describe the circumstances under which remote participation will be allowed and the process
362 the public body will use for making requests to use remote participation, approving or denying such
363 requests, and creating a record of such requests; and

364 2. Fix the number of times remote participation for personal matters or all-virtual public meetings
365 can be used per calendar year, not to exceed the limitations set forth in subdivisions B 4 and C 9.

366 Any public body that creates a committee, subcommittee, or other entity however designated of
367 the public body to perform delegated functions of the public body or to advise the public body may also
368 adopt a policy on behalf of its committee, subcommittee, or other entity that shall apply to the committee,
369 subcommittee, or other entity's conduct of hybrid and all-virtual public meetings.

370 **§ 2.2-3714. Violations and penalties.**

371 A. In a proceeding commenced against any officer, employee, or member of a public body under
372 § 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through 2.2-3705.7, 2.2-3706, 2.2-3706.1, 2.2-3707,
373 2.2-3708.2, 2.2-3708.3, 2.2-3710, 2.2-3711, or 2.2-3712, the court, if it finds that a violation was willfully
374 and knowingly made, shall impose upon such officer, employee, or member in his individual capacity,
375 whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500
376 nor more than \$2,000, which amount shall be paid into the Literary Fund. For a second or subsequent
377 violation, such civil penalty shall be not less than \$2,000 nor more than \$5,000.

378 B. In addition to any penalties imposed pursuant to subsection A, if the court finds that any officer,
379 employee, or member of a public body failed to provide public records to a requester in accordance with
380 the provisions of this chapter because such officer, employee, or member altered or destroyed the
381 requested public records with the intent to avoid the provisions of this chapter with respect to such request
382 prior to the expiration of the applicable record retention period set by the retention regulations
383 promulgated pursuant to the Virginia Public Records Act (§ 42.1-76 et seq.) by the State Library Board,
384 the court may impose upon such officer, employee, or member in his individual capacity, whether or not
385 a writ of mandamus or injunctive relief is awarded, a civil penalty of up to \$100 per record altered or
386 destroyed, which amount shall be paid into the Literary Fund.

387 C. In addition to any penalties imposed pursuant to subsections A and B, if the court finds that a
388 public body voted to certify a closed meeting in accordance with subsection D of § 2.2-3712 and such
389 certification was not in accordance with the requirements of clause (i) or (ii) of subsection D of § 2.2-
390 3712, the court may impose on the public body, whether or not a writ of mandamus or injunctive relief is
391 awarded, a civil penalty of up to \$1,000, which amount shall be paid into the Literary Fund. In determining
392 whether a civil penalty is appropriate, the court shall consider mitigating factors, including reliance of

393 members of the public body on (i) opinions of the Attorney General, (ii) court cases substantially
394 supporting the rationale of the public body, and (iii) published opinions of the Freedom of Information
395 Advisory Council.

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