

SENATE BILL NO. _____ HOUSE BILL NO. _____

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A BILL to amend and reenact §§ 2.2-3701 and 2.2-3708 of the Code of Virginia, relating to the Freedom of Information Act; electronic meetings; authority of local public bodies.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3701 and 2.2-3708 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3701. Definitions.

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

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

"Electronic communication" means any audio or combined audio and visual communication method.

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

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. The gathering of employees of a public body shall not be deemed a "meeting" subject to the provisions of this chapter.

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

"Public body" means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning

25 commissions; boards of visitors of public institutions of higher education; and other organizations,
26 corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall
27 include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of
28 directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee,
29 subcommittee, or other entity however designated, of the public body created to perform delegated
30 functions of the public body or to advise the public body. It shall not exclude any such committee,
31 subcommittee or entity because it has private sector or citizen members. Corporations organized by the
32 Virginia Retirement System are "public bodies" for purposes of this chapter.

33 For the purposes of the provisions of this chapter applicable to access to public records,
34 constitutional officers shall be considered public bodies and, except as otherwise expressly provided by
35 law, shall have the same obligations to disclose public records as other custodians of public records.

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

42 "Regional public body" means a unit of government organized as provided by law within defined
43 boundaries, as determined by the General Assembly, whose members are appointed by the participating
44 local governing bodies, and such unit includes two or more counties or cities.

45 "Scholastic records" means those records containing information directly related to a student and
46 maintained by a public body that is an educational agency or institution or by a person acting for such
47 agency or institution.

48 § 2.2-3708. Electronic communication meetings; applicability; physical quorum required; notice;
49 report.

50 A. Except as expressly provided in subsection G of this section or § 2.2-3708.1, no local
51 governing body, school board, or any authority, board, bureau, commission, district or agency of local

52 government, any committee thereof, or any entity created by a local governing body, school board, or
 53 any local authority, board, or commission shall conduct a meeting wherein the public business is
 54 discussed or transacted through telephonic, video, electronic or other communication means where the
 55 members are not physically assembled. Nothing in this section shall be construed to prohibit the use of
 56 interactive audio or video means to expand public participation.

57 B. Except as provided in subsection D of § 2.2-3707.01, state public bodies may conduct any
 58 meeting wherein the public business is discussed or transacted through electronic communication
 59 means, provided (i) a quorum of the public body is physically assembled at one primary or central
 60 meeting location, (ii) notice of the meeting has been given in accordance with subsection C, and (iii) the
 61 remote locations, from which additional members of the public body participate through electronic
 62 communication means, are open to the public. All persons attending the meeting at any of the meeting
 63 locations shall be afforded the same opportunity to address the public body as persons attending the
 64 primary or central location. ~~Public~~State public bodies, however, may meet by electronic communication
 65 means without a quorum of the public body physically assembled at one location when ~~(i)~~(a) the
 66 Governor has declared a state of emergency in accordance with § 44-146.17, ~~(ii)~~(b) the meeting is
 67 necessary to take action to address the emergency, and ~~(iii)~~(c) the public body otherwise complies with
 68 the provisions of this section.

69 If an authorized public body holds an electronic meeting pursuant to this section, it shall also
 70 hold at least one meeting annually where members in attendance at the meeting are physically
 71 assembled at one location and where no members participate by electronic communication means.

72 C. Notice of any meetings held pursuant to this section shall be provided at least three working
 73 days in advance of the date scheduled for the meeting. The notice shall include the date, time, place, and
 74 purpose for the meeting; shall identify the locations for the meeting; and shall include a telephone
 75 number that may be used at remote locations to notify the primary or central meeting location of any
 76 interruption in the telephonic or video broadcast of the meeting to the remote locations. Any interruption
 77 in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting
 78 until repairs are made and public access restored.

79 D. Agenda packets and, unless exempt, all materials that will be distributed to members of the
80 public body and that have been made available to the staff of the public body in sufficient time for
81 duplication and forwarding to all locations where public access will be provided shall be made available
82 to the public at the time of the meeting. Minutes of all meetings held by electronic communication
83 means shall be recorded as required by § 2.2-3707. Votes taken during any meeting conducted through
84 electronic communication means shall be recorded by name in roll-call fashion and included in the
85 minutes.

86 E. Three working days' notice shall not be required for meetings authorized under this section
87 held in accordance with subsection G or that are continued to address an emergency or to conclude the
88 agenda of the meeting for which proper notice has been given, when the date, time, place, and purpose
89 of the continued meeting are set during the meeting prior to adjournment. Public bodies conducting
90 emergency meetings through electronic communication means shall comply with the provisions of
91 subsection D requiring minutes of the meeting. The nature of the emergency shall be stated in the
92 minutes.

93 F. Any authorized public body that meets by electronic communication means shall make a
94 written report of the following to the Virginia Freedom of Information Advisory Council and the Joint
95 Commission on Technology and Science by December 15 of each year:

- 96 1. The total number of electronic communication meetings held that year;
- 97 2. The dates and purposes of the meetings;
- 98 3. The number of sites for each meeting;
- 99 4. The types of electronic communication means by which the meetings were held;
- 100 5. The number of participants, including members of the public, at each meeting location;
- 101 6. The identity of the members of the public body recorded as absent and those recorded as
102 present at each meeting location;
- 103 7. A summary of any public comment received about the electronic communication meetings;
- 104 and

105 8. A written summary of the public body’s experience using electronic communication meetings,
106 including its logistical and technical experience.

107 G. Any local governing body, school board, or any authority, board, bureau, commission,
108 district, or agency of local government may meet by electronic communication means without a quorum
109 of the public body physically assembled at one location when the Governor has declared a state of
110 emergency in accordance with § 44-146.17, provided (i) the catastrophic nature of the declared
111 emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the
112 purpose of the meeting is to address the emergency. The local public body convening a meeting in
113 accordance with this subsection shall (a) give public notice using the best available method given the
114 nature of the emergency, which notice shall be given contemporaneously with the notice provided
115 members of the local public body conducting the meeting; (b) make arrangements for public access to
116 such meeting; and (c) otherwise comply with the provisions of this section. The nature of the
117 emergency and the fact that the meeting was held by electronic communication means shall be stated in
118 the minutes.

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