

**SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_**

1 A BILL to amend and reenact §§ 2.2-3701 and 2.2-3713 of the Code of Virginia, relating to the Virginia  
2 Freedom of Information; proceedings for enforcement.

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

4 **1. That §§ 2.2-3701 and 2.2-3713 of the Code of Virginia is amended and reenacted as follows:**

5 **§ 2.2-3701. Definitions.**

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

7 "All-virtual public meeting" means a public meeting (i) conducted by a public body, other than  
8 those excepted pursuant to subsection C of § 2.2-3708.3, using electronic communication means, (ii)  
9 during which all members of the public body who participate do so remotely rather than being assembled  
10 in one physical location, and (iii) to which public access is provided through electronic communication  
11 means.

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

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

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

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

20 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or  
21 through electronic communication means pursuant to § 2.2-3708.2 or 2.2-3708.3, as a body or entity, or  
22 as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the  
23 constituent membership, wherever held, with or without minutes being taken, whether or not votes are  
24 cast, of any public body. Neither the gathering of employees of a public body nor the gathering or  
25 attendance of two or more members of a public body (a) at any place or function where no part of the

26 purpose of such gathering or attendance is the discussion or transaction of any public business, and such  
27 gathering or attendance was not called or prearranged with any purpose of discussing or transacting any  
28 business of the public body, or (b) at a public forum, informational gathering, candidate appearance, or  
29 debate, the purpose of which is to inform the electorate or to gather information from the public and not  
30 to transact public business or to hold discussions relating to the transaction of public business, even though  
31 the performance of the members individually or collectively in the conduct of public business may be a  
32 topic of discussion or debate at such public meeting, shall be deemed a "meeting" subject to the provisions  
33 of this chapter. The attendance of members of a public body at the meeting of another public body does  
34 not constitute a meeting of the first public body so long as those members attending the other public body's  
35 meeting do not discuss or transact any public business.

36 "Public Business" means activity that the public body has undertaken or proposed to undertake on  
37 behalf of the people it represents.

38 "Official public government website" means any Internet site controlled by a public body and used,  
39 among any other purposes, to post required notices and other content pursuant to this chapter on behalf of  
40 the public body.

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, municipal councils, governing bodies of counties, school boards, and planning  
45 commissions; governing boards of public institutions of higher education; and other organizations,  
46 corporations, or agencies in the Commonwealth supported wholly or principally by public funds. It shall  
47 include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of  
48 directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee,  
49 subcommittee, or other entity however designated of the public body created to perform delegated  
50 functions of the public body or to advise the public body. It shall not exclude any such committee,  
51 subcommittee, or entity because it has private sector or citizen members. Corporations organized by the  
52 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 by an individual member of a public body by  
65 electronic communication means in a public meeting where a quorum of the public body is otherwise  
66 physically assembled.

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

70 "Trade secret" means the same as that term is defined in the Uniform Trade Secrets Act (§ 59.1-  
71 336 et seq.).

72 **§ 2.2-3713. Proceedings for enforcement of chapter.**

73 A. Any person, including the attorney for the Commonwealth acting in his official or individual  
74 capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and  
75 privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause.  
76 Such petition may be brought in the name of the person notwithstanding that a request for public records  
77 was made by the person's attorney in his representative capacity. Venue for the petition shall be addressed  
78 as follows:

79           1. In a case involving a local public body, to the general district court or circuit court of the county  
80 or city from which the public body has been elected or appointed to serve and in which such rights and  
81 privileges were so denied;

82           2. In a case involving a regional public body, to the general district or circuit court of the county  
83 or city where the principal business office of such body is located; and

84           3. In a case involving a board, bureau, commission, authority, district, institution, or agency of the  
85 state government, including a public institution of higher education, or a standing or other committee of  
86 the General Assembly, to the general district court or the circuit court of the residence of the aggrieved  
87 party or of the City of Richmond.

88           B. In any action brought before a general district court, a corporate petitioner may appear through  
89 its officer, director or managing agent without the assistance of counsel, notwithstanding any provision of  
90 law or Rule of Supreme Court of Virginia to the contrary.

91           C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall be  
92 heard within seven days of the date when the same is made, provided the party against whom the petition  
93 is brought has received a copy of the petition at least three working days prior to filing. However, if the  
94 petition or the affidavit supporting the petition for mandamus or injunction alleges violations of the open  
95 meetings requirements of this chapter, the three-day notice to the party against whom the petition is  
96 brought shall not be required. The hearing on any petition made outside of the regular terms of the circuit  
97 court of a locality that is included in a judicial circuit with another locality or localities shall be given  
98 precedence on the docket of such court over all cases that are not otherwise given precedence by law.

99           D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights  
100 and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred  
101 by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be  
102 in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs,  
103 including costs and reasonable fees for expert witnesses, and attorney fees from the public body if the  
104 petitioner substantially prevails on the merits of the case, unless special circumstances would make an  
105 award unjust. In making this determination, a court may consider, among other things, the reliance of a

106 public body on an opinion of the Attorney General or a decision of a court that substantially supports the  
107 public body's position.

108 E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of  
109 proof to establish an exclusion by a preponderance of the evidence. No court shall be required to accord  
110 any weight to the determination of a public body as to whether an exclusion applies. Any failure by a  
111 public body to follow the procedures established by this chapter shall be presumed to be a violation of this  
112 chapter.

113 F. Failure by any person to request and receive notice of the time and place of meetings as provided  
114 in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred by this  
115 chapter.

116 G. The remedies stated in this chapter are exclusive. No violation of this chapter shall render void  
117 any otherwise lawful action taken by a public body.

118 **2. That this enactment is declarative of existing law.**

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