

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3707 and 2.2-3713 of the Code of Virginia, relating to the
2 Freedom of Information Act; proceedings for enforcement; exception.

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

4 **1. That §§ 2.2-3707 and 2.2-3713 of the Code of Virginia are amended and reenacted as follows:**

5 § 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.

6 A. All meetings of public bodies shall be open, except as provided in §§ 2.2-3707.01 and 2.2-
7 3711.

8 B. No meeting shall be conducted through telephonic, video, electronic or other communication
9 means where the members are not physically assembled to discuss or transact public business, except as
10 provided in § 2.2-3708, 2.2-3708.1 or as may be specifically provided in Title 54.1 for the summary
11 suspension of professional licenses.

12 C. Every public body shall give notice of the date, time, and location of its meetings by placing
13 the notice in a prominent public location at which notices are regularly posted and in the office of the
14 clerk of the public body, or in the case of a public body that has no clerk, in the office of the chief
15 administrator. All state public bodies subject to the provisions of this chapter shall also post notice of
16 their meetings on their websites and on the electronic calendar maintained by the Virginia Information
17 Technologies Agency commonly known as the Commonwealth Calendar. Publication of meeting notices
18 by electronic means by other public bodies shall be encouraged. The notice shall be posted at least three
19 working days prior to the meeting. Notices for meetings of state public bodies on which there is at least
20 one member appointed by the Governor shall state whether or not public comment will be received at
21 the meeting and, if so, the approximate point during the meeting when public comment will be received.

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

24 E. Any person may annually file a written request for notification with a public body. The
25 request shall include the requester's name, address, zip code, daytime telephone number, electronic mail

26 address, if available, and organization, if any. The public body receiving such request shall provide
27 notice of all meetings directly to each such person. Without objection by the person, the public body
28 may provide electronic notice of all meetings in response to such requests. Failure by any person to
29 request and receive notice of the time and place of meetings as provided in this subsection shall not
30 preclude any person from enforcing his rights and privileges conferred by this chapter.

31 F. At least one copy of all agenda packets and, unless exempt, all materials furnished to members
32 of a public body for a meeting shall be made available for public inspection at the same time such
33 documents are furnished to the members of the public body.

34 G. Nothing in this chapter shall be construed to prohibit the gathering or attendance of two or
35 more members of a public body (i) at any place or function where no part of the purpose of such
36 gathering or attendance is the discussion or transaction of any public business, and such gathering or
37 attendance was not called or prearranged with any purpose of discussing or transacting any business of
38 the public body or (ii) at a public forum, candidate appearance, or debate, the purpose of which is to
39 inform the electorate and not to transact public business or to hold discussions relating to the transaction
40 of public business, even though the performance of the members individually or collectively in the
41 conduct of public business may be a topic of discussion or debate at such public meeting. The notice
42 provisions of this chapter shall not apply to informal meetings or gatherings of the members of the
43 General Assembly.

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

51 I. Minutes shall be recorded at all open meetings. However, minutes shall not be required to be
52 taken at deliberations of (i) standing and other committees of the General Assembly; (ii) legislative

53 interim study commissions and committees, including the Virginia Code Commission; (iii) study
54 committees or commissions appointed by the Governor; or (iv) study commissions or study committees,
55 or any other committees or subcommittees appointed by the governing bodies or school boards of
56 counties, cities and towns, except where the membership of any such commission, committee or
57 subcommittee includes a majority of the governing body of the county, city or town or school board.

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

60 Minutes shall be in writing and shall include (i) the date, time, and location of the meeting; (ii)
61 the members of the public body recorded as present and absent; and (iii) a summary of the discussion on
62 matters proposed, deliberated or decided, and a record of any votes taken. In addition, for electronic
63 communication meetings conducted in accordance with § 2.2-3708, minutes of state public bodies shall
64 include (a) the identity of the members of the public body at each remote location identified in the notice
65 who participated in the meeting through electronic communications means, (b) the identity of the
66 members of the public body who were physically assembled at the primary or central meeting location,
67 and (c) the identity of the members of the public body who were not present at the locations identified in
68 clauses (a) and (b), but who monitored such meeting through electronic communications means.

69 § 2.2-3713. Proceedings for enforcement of chapter.

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

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

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

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

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

88 C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall
89 be heard within seven days of the date when the same is made. However, any petition made outside of
90 the regular terms of the circuit court of a county that is included in a judicial circuit with another county
91 or counties, the hearing on the petition shall be given precedence on the docket of such court over all
92 cases that are not otherwise given precedence by law.

93 D. The petition shall allege with reasonable specificity the circumstances of the denial of the
94 rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges
95 conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the
96 denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover
97 reasonable costs, including costs and reasonable fees for expert witnesses, and attorneys' fees from the
98 public body if the petitioner substantially prevails on the merits of the case, unless special circumstances
99 would make an award unjust. In making this determination, a court may consider, among other things,
100 the reliance of a public body on an opinion of the Attorney General or a decision of a court that
101 substantially supports the public body's position.

102 E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of
103 proof to establish an exemption by a preponderance of the evidence. Any failure by a public body to
104 follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

105 F. ~~Failure by any person to request and receive notice of the time and place of meetings as~~
106 ~~provided in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred~~
107 ~~by this chapter.~~In any proceeding under this section to compel the disclosure of requested records,
108 whether a writ of mandamus or injunctive relief is awarded or not, the court may decline to order
109 production of the records if it finds by clear and convincing evidence that the frequency or volume of the
110 record requests made by the petitioner (i) constitutes an unreasonable burden on the resources of the
111 public body; (ii) has been made with the intention of (a) harassing the public body or a public official or
112 (b) preventing the public body from meeting its operational responsibilities; or (iii) has been made to
113 evade the payment of charges assessed in accordance with § 2.2-3704.

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