

# DRAFT

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

1 A BILL to amend and reenact §§ 2.2-3707 and 2.2-3708 of the Code of Virginia, relating to the  
2 Virginia Freedom of Information Act; electronic meetings; notice; minutes.

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

4 **1. That §§ 2.2-3707 and 2.2-3708 of the Code of Virginia are amended and reenacted as**  
5 **follows:**

6 § 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.

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

9 B. No meeting shall be conducted through telephonic, video, electronic or other  
10 communication means where the members are not physically assembled to discuss or transact  
11 public business, except as provided in §§ 2.2-3708, 2.2-3709 or as may be specifically  
12 provided in Title 54.1 for the summary suspension of professional licenses.

13 C. Every public body shall give notice of the date, time, and location of its meetings by  
14 placing the notice in a prominent public location at which notices are regularly posted and in  
15 the office of the clerk of the public body, or in the case of a public body that has no clerk, in the  
16 office of the chief administrator. All state public bodies in the executive branch of government

17 and subject to the provisions of this chapter shall also post notice of meetings on the Internet.

18 Publication of meeting notices by electronic means by other public bodies shall be  
19 encouraged. The notice shall be posted at least three working days prior to the meeting.

20 Notices for meetings of state public bodies on which there is at least one member appointed by  
21 the Governor shall state whether or not public comment will be received at the meeting and, if  
22 so, the approximate point during the meeting when public comment will be received.

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

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

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

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

45 H. Any person may photograph, film, record or otherwise reproduce any portion of a  
46 meeting required to be open. The public body conducting the meeting may adopt rules  
47 governing the placement and use of equipment necessary for broadcasting, photographing,  
48 filming or recording a meeting to prevent interference with the proceedings.

49 I. Minutes shall be recorded at all open meetings. However, minutes shall not be  
50 required to be taken at deliberations of (i) standing and other committees of the General  
51 Assembly; (ii) legislative interim study commissions and committees, including the Virginia  
52 Code Commission; (iii) study committees or commissions appointed by the Governor; or (iv)  
53 study commissions or study committees, or any other committees or subcommittees appointed  
54 by the governing bodies or school boards of counties, cities and towns, except where the  
55 membership of any such commission, committee or subcommittee includes a majority of the  
56 governing body of the county, city or town or school board.

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

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

69 § 2.2-3708. Electronic communication meetings.

70 A. It shall be a violation of this chapter for any political subdivision or any governing  
71 body, authority, board, bureau, commission, district or agency of local government or any  
72 committee thereof to conduct a meeting wherein the public business is discussed or transacted  
73 through telephonic, video, electronic or other communication means where the members are  
74 not physically assembled. Nothing in this section shall be construed to prohibit the use of  
75 interactive audio or video means to expand public participation.

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B. For purposes of this section, ~~"public;~~

"Public body" means any public body of the Commonwealth, but excludes any political subdivision or any governing body, authority, board, bureau, commission, district or agency of local government.

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

State public bodies may conduct any meeting ~~except closed meetings held pursuant to § 2.2-3711,~~ wherein the public business is discussed or transacted through ~~telephonic or video~~electronic communication means. Where a quorum of a public body of the Commonwealth is physically assembled at one location for the purpose of conducting a meeting authorized under this section, additional members of such public body may participate in the meeting through ~~telephonic~~electronic communication means provided such participation is available to the public.

If a public body holds an electronic meeting pursuant to this section, the public body shall also hold at least one meeting annually where its membership is physically assembled at one location.

C. Notice of any meetings held pursuant to this section shall be provided at least ~~30~~ seven working days in advance of the date scheduled for the meeting. The notice shall include the date, time, place and purpose for the meeting ~~and;~~ shall identify the locations for the meeting and shall include a telephone number that may be used during the meeting by participants attending the meeting at remote locations to notify the primary or central meeting location of any interruption in the telephonic or video broadcast of the meeting to the remote locations. All locations for the meeting shall be made accessible to the public. All persons attending the meeting at any of the meeting locations shall be afforded the same opportunity to address the public body as persons attending the primary or central location. Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored.

103 ~~Thirty day~~ Seven working days' notice shall not be required for ~~telephonic or video~~  
104 meetings authorized under this section continued to address an emergency as provided in  
105 subsection F or to conclude the agenda of a ~~telephonic or video~~ meeting authorized under this  
106 section of the public body for which the proper notice has been given, when the date, time,  
107 place and purpose of the continued meeting are set during the meeting prior to adjournment.

108 ~~The public body shall provide the Virginia Information Technologies Agency with notice~~  
109 ~~of all public meetings held through telephonic or video means pursuant to this section.~~

110 D. An agenda and materials that will be distributed to members of the public body and  
111 that have been made available to the staff of the public body in sufficient time for duplication  
112 and forwarding to all locations where public access will be provided shall be made available to  
113 the public at the time of the meeting. Minutes of all meetings held by ~~telephonic or video~~  
114 electronic communication means shall be recorded as required by § 2.2-3707. Votes taken  
115 during any meeting conducted through ~~telephonic or video~~ electronic communication means  
116 shall be recorded by name in roll-call fashion and included in the minutes. ~~In addition, the~~  
117 ~~public body shall make an audio recording of the meeting, if a telephonic medium is used, or~~  
118 ~~an audio/visual recording, if the meeting is held by video means. The recording shall be~~  
119 ~~preserved by the public body for a period of three years following the date of the meeting and~~  
120 ~~shall be available to the public.~~

121 E. ~~No more than 25 percent of all meetings held annually by a public body, including~~  
122 ~~meetings of any ad hoc or standing committees, may be held by telephonic or video means.~~  
123 Any public body that meets by ~~telephonic or video~~ electronic communication means shall ~~file~~  
124 ~~with~~ make a written report of the following to the Virginia ~~Information Technologies Agency~~  
125 Freedom of Information Advisory Council and the Joint Commission on Technology and  
126 Science by ~~July 1~~ December 15 of each year ~~a statement identifying the total;~~

127 1. The total number of electronic communication meetings held during the preceding  
128 ~~fiscal year, the dates on which;~~

129 2. The dates and purposes of the meetings ~~were held and the number and purpose of~~  
130 ~~those conducted through telephonic or video means;~~

131 3. The number of sites for each meeting;

132 4. The types of electronic communication means by which the meetings were held;

133 5. The number of participants, including the members of the public, at each meeting  
134 location;

135 6. The identity of the members of the public body recorded as absent, and those  
136 recorded as present at each meeting location;

137 7. A summary of any public comment received about the electronic communication  
138 meetings; and

139 8. A written summary of the public body's experience using electronic communication  
140 meetings, including its logistical and technical experience .

141 F. ~~Notwithstanding the limitations imposed by subsection E, a~~ A public body may meet  
142 by ~~telephonic or video~~ electronic communication means as often as needed if an emergency  
143 exists and the public body is unable to meet in regular session. Public bodies conducting  
144 emergency meetings through ~~telephonic or video~~ electronic communication means shall  
145 comply with the provisions of subsection D requiring minutes, ~~recordation and preservation of~~  
146 ~~the audio or audio/visual recording~~ of the meeting. The nature of the emergency shall be  
147 stated in the minutes.

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