

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3701 and 2.2-3708 of the Code of Virginia and to amend the Code
2 of Virginia by adding a section numbered 2.2-3708.1, relating to the Virginia Freedom of
3 Information Act; electronic communication meetings; participation in meetings in event of
4 emergency; certain disabilities; regional public bodies.

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

6 **1. That §§ 2.2-3701 and 2.2-3708 of the Code of Virginia are amended and reenacted and that**
7 **Code of Virginia is amended by adding a section numbered 2.2-3708.1 as follows:**

8 § 2.2-3701. Definitions.

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

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

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

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

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

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

22 "Public body" means any legislative body, authority, board, bureau, commission, district or
23 agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities,
24 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. ~~It~~ Except as expressly provided in § 2.2-3708.1, shall be a violation of this chapter for any
 51 political subdivision or any no local governing body, school board, or any authority, board, bureau,

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

57 ~~B. For purposes of this section:~~

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

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

63 B. Except as provided in subsection D of § 2.2-3707.01, state public bodies may conduct any
 64 meeting wherein the public business is discussed or transacted through electronic communication
 65 means. ~~Where~~, provided (i) a quorum of ~~a the~~ public body ~~of the Commonwealth~~ is physically
 66 assembled at one primary or central meeting location ~~for the purpose of conducting a meeting authorized~~
 67 ~~under this section, additional members of such public body may participate in the meeting through~~
 68 ~~electronic communication means provided such participation is available to the public, (ii) notice of the~~
 69 ~~meeting has been given in accordance with subsection D, and (iii) the remote locations, from which~~
 70 ~~additional members of the public body participate through electronic communication means, are open to~~
 71 ~~the public. All persons attending the meeting at any of the meeting locations shall be afforded the same~~
 72 ~~opportunity to address the public body as persons attending the primary or central location.~~

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

77 C. Notice of any meetings held pursuant to this section shall be provided at least ~~seven~~ three
 78 working days in advance of the date scheduled for the meeting. The notice shall include the date, time,

79 place, and purpose for the meeting; shall identify the locations for the meeting; and shall include a
 80 telephone number that may be used at remote locations to notify the primary or central meeting location
 81 of any interruption in the telephonic or video broadcast of the meeting to the remote locations. ~~All~~
 82 ~~locations for the meeting shall be made accessible to the public. All persons attending the meeting at any~~
 83 ~~of the meeting locations shall be afforded the same opportunity to address the public body as persons~~
 84 ~~attending the primary or central location.~~ Any interruption in the telephonic or video broadcast of the
 85 meeting shall result in the suspension of action at the meeting until repairs are made and public access
 86 restored.

87 ~~Seven working days' notice shall not be required for meetings authorized under this section~~
 88 ~~continued to address an emergency as provided in subsection F or to conclude the agenda of a meeting~~
 89 ~~authorized under this section for which the proper notice has been given, when the date, time, place, and~~
 90 ~~purpose of the continued meeting are set during the meeting prior to adjournment.~~

91 D. ~~An agenda and materials~~ Agenda packets and, unless exempt, all materials that will be
 92 distributed to members of the public body and that have been made available to the staff of the public
 93 body in sufficient time for duplication and forwarding to all locations where public access will be
 94 provided shall be made available to the public at the time of the meeting. Minutes of all meetings held
 95 by electronic communication means shall be recorded as required by § 2.2-3707. Votes taken during any
 96 meeting conducted through electronic communication means shall be recorded by name in roll-call
 97 fashion and included in the minutes.

98 ~~E. Any public body that meets by electronic communication means shall make a written report of~~
 99 ~~the following to the Virginia Freedom of Information Advisory Council and the Joint Commission on~~
 100 ~~Technology and Science by December 15 of each year:~~

- 101 ~~1. The total number of electronic communication meetings held during the preceding year;~~
- 102 ~~2. The dates and purposes of the meetings;~~
- 103 ~~3. The number of sites for each meeting;~~
- 104 ~~4. The types of electronic communication means by which the meetings were held;~~
- 105 ~~5. The number of participants, including members of the public, at each meeting location;~~

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

108 ~~7. A summary of any public comment received about the electronic communication meetings;~~
109 ~~and~~

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

112 ~~F. A public body may meet by electronic communication means as often as needed if an~~
113 ~~emergency exists and the public body is unable to meet in regular session. E. Three working days' notice~~
114 ~~shall not be required for meetings that are authorized under this section continued to address an~~
115 ~~emergency or to conclude the agenda of a meeting authorized under this section for which the proper~~
116 ~~notice has been given, when the date, time, place, and purpose of the continued meeting are set during~~
117 ~~the meeting prior to adjournment.~~ Public bodies conducting emergency meetings through electronic
118 communication means shall comply with the provisions of subsection D requiring minutes of the
119 meeting. The nature of the emergency shall be stated in the minutes.

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

- 123 ~~1. The total number of electronic communication meetings held during the preceding year;~~
- 124 ~~2. The dates and purposes of the meetings;~~
- 125 ~~3. The number of sites for each meeting;~~
- 126 ~~4. The types of electronic communication means by which the meetings were held;~~
- 127 ~~5. The number of participants, including members of the public, at each meeting location;~~
- 128 ~~6. The identity of the members of the public body recorded as absent and those recorded as~~
129 ~~present at each meeting location;~~

130 ~~7. A summary of any public comment received about the electronic communication meetings;~~
131 ~~and~~

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

134 § 2.2-3708.1. Participation in meetings in event of emergency; certain disabilities; distance from
135 meeting location for certain public bodies.

136 A. A member of a public body may participate in a meeting governed by this chapter through
137 electronic communication means from a remote location that is not open to the public only as follows
138 and subject to the requirements of subsection B:

139 1. If, on the day of a meeting, a member of the public body holding the meeting notifies the chair
140 of the public body that such member is unable to attend the meeting due to an emergency and identifies
141 with specificity the nature of the emergency, and the public body holding the meeting (a) approves such
142 member's participation by a majority vote of the members present and (b) records in its minutes the
143 specific nature of the emergency and the remote location from which the member participated.

144 Such participation by the member shall be limited each calendar year to two meetings or 25
145 percent of the meetings of the public body, whichever is less.

146 2. If a member of a public body notifies the chair of the public body that such member is unable
147 to attend a meeting due to a temporary or permanent disability or other medical condition that prevents
148 the member's physical attendance and the public body records this fact in its minutes; or

149 3. If a member of a regional public body notifies the chair of the public body that such member
150 resides more than 60 miles from the meeting location identified in the required notice for such meeting
151 and the public body holding the meeting (a) approves such member's participation by a majority vote of
152 the members present and (b) records in its minutes the remote location from which the member
153 participated.

154 B. Participation by a member of a public body as authorized under subsection A shall be only
155 under the following conditions:

156 1. A quorum of the public body is physically assembled at the primary or central meeting
157 location; and

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2. The public body makes arrangements for the voice of the remote participant to be heard by all

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persons at the primary or central meeting location.

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