

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
2 Freedom of Information Act; definition of public body; 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 are amended and reenacted as follows:**

5 **§ 2.2-3701. Definitions.**

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

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

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

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

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

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

19 "Public body" means any legislative body, authority, board, bureau, commission, district or
20 agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities,
21 towns and counties, municipal councils, governing bodies of counties, school boards and planning
22 commissions; boards of visitors of public institutions of higher education; and other organizations,
23 corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall
24 include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of
25 directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee,

26 subcommittee, or other entity however designated, of the public body created to perform delegated
27 functions of the public body or to advise the public body. It shall not exclude any such committee,
28 subcommittee or entity because it has private sector or citizen members. Corporations organized by the
29 Virginia Retirement System are "public bodies" for purposes of this chapter.

30 For the purposes of the provisions of this chapter applicable to access to public records, (a)
31 constitutional officers shall be considered public bodies and, except as otherwise expressly provided by
32 law, shall have the same obligations to disclose public records as other custodians of public records and
33 (b) the State Corporation Commission shall be considered a public body and, except as otherwise
34 expressly provided by law, shall have the same obligation to disclose public records as other custodians
35 of public records, but shall have no obligation to disclose public records that pertain to the Commission's
36 regulatory activities. The State Corporation Commission, however, shall not be deemed a public body
37 for the purposes of the meeting requirements of this chapter.

38 "Public records" means all writings and recordings that consist of letters, words or numbers, or
39 their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic
40 impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data
41 compilation, however stored, and regardless of physical form or characteristics, prepared or owned by,
42 or in the possession of a public body or its officers, employees or agents in the transaction of public
43 business. Records that are not prepared for or used in the transaction of public business are not public
44 records.

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

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

51 **§ 2.2-3713. Proceedings for enforcement of chapter.**

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

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

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

63 3. ~~In~~ Except as provided in subdivision 4, in a case involving a board, bureau, commission,
64 authority, district, institution, or agency of the state government, including a public institution of higher
65 education, or a standing or other committee of the General Assembly, to the general district court or the
66 circuit court of the residence of the aggrieved party or of the City of Richmond; and

67 4. In a case involving the State Corporation Commission, to the Supreme Court in accordance
68 with Article IX, Section 3 of the Constitution of Virginia.

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

72 C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall
73 be heard within seven days of the date when the same is made, provided the party against whom the
74 petition is brought has received a copy of the petition at least three working days prior to filing. The
75 hearing on any petition made outside of the regular terms of the circuit court of a locality that is included
76 in a judicial circuit with another locality or localities shall be given precedence on the docket of such
77 court over all cases that are not otherwise given precedence by law.

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

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

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

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