

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3701, 2.2-3708, 2.2-3708.1, and 30-179 of the Code of Virginia,
2 relating to the Virginia Freedom of Information Act; meetings by electronic means; public access
3 to remote locations.

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

5 **1. That §§ 2.2-3701, 2.2-3708, 2.2-3708.1, and 30-197 of the Code of Virginia are amended and**
6 **reenacted as follows:**

7 **§ 2.2-3701. Definitions.**

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

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

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

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

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

17 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically,
18 or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as
19 an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the
20 constituent membership, wherever held, with or without minutes being taken, whether or not votes are
21 cast, of any public body. Neither the gathering of employees of a public body nor the gathering or
22 attendance of two or more members of a public body ~~(i)~~ (a) at any place or function where no part of the
23 purpose of such gathering or attendance is the discussion or transaction of any public business, and such
24 gathering or attendance was not called or prearranged with any purpose of discussing or transacting any
25 business of the public body, or ~~(ii)~~ (b) at a public forum, candidate appearance, or debate; the purpose of

26 which is to inform the electorate and not to transact public business or to hold discussions relating to the
27 transaction of public business, even though the performance of the members individually or collectively
28 in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be
29 deemed a "meeting" subject to the provisions of this chapter.

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

31 "Public body" means any legislative body, authority, board, bureau, commission, district or
32 agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities,
33 towns and counties, municipal councils, governing bodies of counties, school boards and planning
34 commissions; governing boards of public institutions of higher education; and other organizations,
35 corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall
36 include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of
37 directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee,
38 subcommittee, or other entity however designated, of the public body created to perform delegated
39 functions of the public body or to advise the public body. It shall not exclude any such committee,
40 subcommittee or entity because it has private sector or citizen members. Corporations organized by the
41 Virginia Retirement System are "public bodies" for purposes of this chapter.

42 For the purposes of the provisions of this chapter applicable to access to public records,
43 constitutional officers and private police departments as defined in § 9.1-101 shall be considered public
44 bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose
45 public records as other custodians of public records.

46 "Public records" means all writings and recordings that consist of letters, words or numbers, or
47 their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic
48 impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data
49 compilation, however stored, and regardless of physical form or characteristics, prepared or owned by,
50 or in the possession of a public body or its officers, employees or agents in the transaction of public
51 business.

52 "Regional public body" means a unit of government organized as provided by law within defined
53 boundaries, as determined by the General Assembly, which unit includes two or more localities.

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

57 **§ 2.2-3708. Electronic communication meetings; applicability; physical quorum required;**
58 **exceptions; notice; report.**

59 A. Except as expressly provided in subsection ~~G of this section~~ H or § 2.2-3708.1, no local
60 governing body, school board, or ~~any~~ authority, board, bureau, commission, district, or agency of local
61 government, ~~any no~~ committee thereof, ~~or any and no~~ entity created by ~~a any~~ local governing body,
62 school board, or ~~any~~ local authority, board, or commission shall conduct a meeting wherein the public
63 business is discussed or transacted through telephonic, video, electronic, or other communication means
64 where the members are not physically assembled. Nothing in this section shall be construed to prohibit
65 the use of interactive audio or video means to expand public participation.

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

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

77 C. Notice of any regular meeting held pursuant to this section shall be provided at least three
78 working days in advance of the date scheduled for the meeting. Notice, reasonable under the

79 circumstance, of special, emergency, or continued meetings held pursuant to this section shall be given
80 contemporaneously with the notice provided to members of the public body conducting the meeting. For
81 the purposes of this subsection, "continued meeting" means a meeting that is continued to address an
82 emergency or to conclude the agenda of a meeting for which proper notice was given.

83 The notice shall include the date, time, place, and purpose for the meeting; shall identify the
84 ~~locations~~ primary or central meeting location for the meeting; and shall include a telephone number that
85 may be used at remote locations to notify the primary or central meeting location of any interruption in
86 the telephonic or video broadcast of the meeting to the remote locations. Any interruption in the
87 telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until
88 repairs are made and public access is restored.

89 D. A copy of the proposed agenda and agenda packets and, unless exempt, all materials that will
90 be distributed to members of a public body for a meeting shall be made available for public inspection at
91 the same time such documents are furnished to the members of the public body conducting the meeting.
92 Public access to the remote locations from which additional members of the public body participate
93 through electronic communication means shall be encouraged, but not required. If access to such remote
94 locations is afforded, (i) all persons attending the meeting at any of the remote locations shall be
95 afforded the same opportunity to address the public body as persons attending the primary or central
96 location and (ii) a copy of the proposed agenda and agenda packets and, unless exempt, all materials that
97 will be distributed to members of the public body and that have been made available to the staff of the
98 public body in sufficient time for duplication and forwarding to all locations where public access will be
99 provided shall be made available to the public at the time of the meeting.

100 E. Minutes of all meetings held by electronic communication means shall be recorded as
101 required by § 2.2-3707. Votes taken during any meeting conducted through electronic communication
102 means shall be recorded by name in roll-call fashion and included in the minutes.

103 ~~E.F.~~ Three working days' notice shall not be required for meetings authorized under this section
104 held in accordance with subsection ~~G.H.~~ Public bodies conducting emergency meetings through

105 | electronic communication means shall comply with the provisions of subsection ~~D~~E requiring minutes
106 | of the meeting. The nature of the emergency shall be stated in the minutes.

107 | ~~F~~G. Any authorized public body that meets by electronic communication means shall make a
108 | written report of the following to the Virginia Freedom of Information Advisory Council by December
109 | 15 of each year:

- 110 | 1. The total number of electronic communication meetings held that year;
- 111 | 2. The dates and purposes of the meetings;
- 112 | 3. A copy of the agenda for the meeting;
- 113 | 4. The number of sites for each meeting;
- 114 | 5. The types of electronic communication means by which the meetings were held;
- 115 | 6. The number of participants, including members of the public, at each meeting location;
- 116 | 7. The identity of the members of the public body recorded as absent and those recorded as
117 | present at each meeting location;
- 118 | 8. A summary of any public comment received about the electronic communication meetings;
- 119 | and
- 120 | 9. A written summary of the public body's experience using electronic communication meetings,
121 | including its logistical and technical experience.

122 | In addition, any authorized public body shall make available to the public at any meeting
123 | conducted in accordance with this section a public comment form prepared by the Virginia Freedom of
124 | Information Advisory Council in accordance with § 30-179.

125 | ~~G~~H. Any public body may meet by electronic communication means without a quorum of the
126 | public body physically assembled at one location when the Governor has declared a state of emergency
127 | in accordance with § 44-146.17, provided that (i) the catastrophic nature of the declared emergency
128 | makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the
129 | meeting is to address the emergency. The public body convening a meeting in accordance with this
130 | subsection shall (a) give public notice using the best available method given the nature of the
131 | emergency, which notice shall be given contemporaneously with the notice provided members of the

132 public body conducting the meeting; (b) make arrangements for public access to such meeting; and (c)
133 otherwise comply with the provisions of this section. The nature of the emergency, the fact that the
134 meeting was held by electronic communication means, and the type of electronic communication means
135 by which the meeting was held shall be stated in the minutes.

136 **§ 2.2-3708.1. Participation in meetings due to personal matter; certain disabilities; distance**
137 **from meeting location for certain public bodies.**

138 A. A member of a public body may participate in a meeting governed by this chapter through
139 electronic communication means ~~from a remote location that is not open to the public~~ only as provided
140 in § 2.2-3708 or as follows and subject to the requirements of subsection B:

141 1. If, on or before the day of a meeting, a member of the public body holding the meeting notifies
142 the chair of the public body that such member is unable to attend the meeting due to a personal matter
143 and identifies with specificity the nature of the personal matter, and the public body holding the meeting
144 records in its minutes the specific nature of the personal matter and the remote location from which the
145 member participated. If a member's participation from a remote location is disapproved because such
146 participation would violate the policy adopted pursuant to subsection B, such disapproval shall be
147 recorded in the minutes with specificity.

148 Such participation by the member shall be limited each calendar year to two meetings;

149 2. If a member of a public body notifies the chair of the public body that such member is unable
150 to attend a meeting due to a temporary or permanent disability or other medical condition that prevents
151 the member's physical attendance and the public body records this fact and the remote location from
152 which the member participated in its minutes; or

153 3. If, on the day of a meeting, a member of a regional public body notifies the chair of the public
154 body that such member's principal residence is more than 60 miles from the meeting location identified
155 in the required notice for such meeting and the public body holding the meeting records in its minutes
156 the remote location from which the member participated. If a member's participation from a remote
157 location is disapproved because such participation would violate the policy adopted pursuant to
158 subsection B, such disapproval shall be recorded in the minutes with specificity.

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

161 1. The public body has adopted a written policy allowing for and governing participation of its
162 members by electronic communication means, including an approval process for such participation,
163 subject to the express limitations imposed by this section. Once adopted, the policy shall be applied
164 strictly and uniformly, without exception, to the entire membership and without regard to the identity of
165 the member requesting remote participation or the matters that will be considered or voted on at the
166 meeting;

167 2. A quorum of the public body is physically assembled at the primary or central meeting
168 location; and

169 3. The public body makes arrangements for the voice of the remote participant to be heard by all
170 persons at the primary or central meeting location.

171 **§ 30-179. Powers and duties of the Council.**

172 The Council shall:

173 1. Furnish, upon request, advisory opinions or guidelines, and other appropriate information
174 regarding the Freedom of Information Act (§ 2.2-3700 et seq.) to any person or agency of state or local
175 government, in an expeditious manner;

176 2. Conduct training seminars and educational programs for the members and staff of public
177 bodies and other interested persons on the requirements of the Freedom of Information Act (§ 2.2-3700
178 et seq.);

179 3. Publish such educational materials as it deems appropriate on the provisions of the Freedom of
180 Information Act (§ 2.2-3700 et seq.);

181 4. Request from any agency of state or local government such assistance, services and
182 information as will enable the Council to effectively carry out its responsibilities. Information provided
183 to the Council by an agency of state or local government shall not be released to any other party unless
184 authorized by such agency;

185 5. Assist in the development and implementation of the provisions of § 2.2-3704.1;

