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SENATE BILL NO. 1196

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on February 15, 2005)

(Patrons Prior to Substitute—Senators Newman and Houck [SB 711])

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

Be it enacted by the General Assembly of Virginia:

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

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

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

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

C. Every public body shall give notice of the date, time, and location of its meetings by placing the notice in a prominent public location at which notices are regularly posted and in the office of the clerk of the public body, or in the case of a public body that has no clerk, in the office of the chief administrator. *All state public bodies subject to the provisions of this chapter shall also post notice of their meetings on the Internet.* Publication of meeting notices by electronic means *by other public bodies* shall be encouraged. The notice shall be posted at least three working days prior to the meeting. Notices for meetings of state public bodies on which there is at least one member appointed by the Governor shall state whether or not public comment will be received at the meeting and, if so, the approximate point during the meeting when public comment will be received.

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

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

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

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

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

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

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

Minutes shall include, but are not limited to, (i) the date, time and location of the meeting; (ii) the members of the public body recorded as present and absent; and (iii) a summary of the discussion on matters proposed, deliberated or decided, and a record of any votes taken. *In addition, for electronic*

60 *communication meetings conducted in accordance with § 2.2-3708, minutes of state public bodies shall*
 61 *include (a) the identity of the members of the public body at each remote location identified in the*
 62 *notice who participated in the meeting through electronic communications means, (b) the identity of the*
 63 *members of public body who were physically assembled at the primary or central meeting location, and*
 64 *(c) the identity of the members of the public body who were not present at the locations identified in*
 65 *clauses (a) and (b), but who monitored such meeting through electronic communications means.*

66 § 2.2-3708. Electronic communication meetings.

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

73 B. For purposes of this section, ~~"public :~~

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

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

78 ~~State~~ *Except as provided in subsection G, state public bodies may conduct any meeting, except closed*
 79 ~~meetings held pursuant to § 2.2-3711,~~ *wherein the public business is discussed or transacted through*
 80 ~~telephonic or video~~ *electronic communication means. Where a quorum of a public body of the*
 81 *Commonwealth is physically assembled at one location for the purpose of conducting a meeting*
 82 *authorized under this section, additional members of such public body may participate in the meeting*
 83 *through telephonic electronic communication means provided such participation is available to the public.*
 84

85 *If a public body holds an electronic meeting pursuant to this section, the public body shall also hold*
 86 *at least one meeting annually where members in attendance at the meeting are physically assembled at*
 87 *one location and where no members participate by electronic communication means.*

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

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

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

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

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

120 *1. The total number of electronic communication meetings held during the preceding fiscal year, the*
 121 *dates on which ;*

122 2. *The dates and purposes of the meetings were held and the number and purpose of those conducted*
123 *through telephonic or video means;*

124 3. *The number of sites for each meeting;*

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

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

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

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

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

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

138 G. *No regular, special, or reconvened session of the General Assembly held pursuant to Article IV,*
139 *Section 6 of the Constitution of Virginia shall be conducted by electronic communication means.*