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HOUSE BILL NO. 854

Offered January 9, 2008

Prefiled January 8, 2008

A BILL to amend and reenact §§ 2.2-3701, 2.2-3708 and 2.2-3714 of the Code of Virginia, relating to the Freedom of Information Act; electronic meetings; authority of local public bodies.

Patron—Ebbin

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3701, 2.2-3708 and 2.2-3714 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3701. Definitions.

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

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

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

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

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

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

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

For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records.

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

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

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

§ 2.2-3708. Electronic communication meetings; applicability; physical quorum required; notice; report.

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

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59 audio or video means to expand public participation.

60 B. Except as provided in subsection D of § 2.2-3707.01, state public bodies may conduct any
 61 meeting wherein the public business is discussed or transacted through electronic communication means,
 62 provided (i) a quorum of the public body is physically assembled at one primary or central meeting
 63 location, (ii) notice of the meeting has been given in accordance with subsection C, and (iii) the remote
 64 locations, from which additional members of the public body participate through electronic
 65 communication means, are open to the public. All persons attending the meeting at any of the meeting
 66 locations shall be afforded the same opportunity to address the public body as persons attending the
 67 primary or central location. ~~Public~~ *State public* bodies, however, may meet by electronic communication
 68 means without a quorum of the public body physically assembled at one location when ~~(i)~~(a) the
 69 Governor has declared a state of emergency in accordance with § 44-146.17, ~~(ii)~~(b) the meeting is
 70 necessary to take action to address the emergency, and ~~(iii)~~(c) the public body otherwise complies with
 71 the provisions of this section.

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

75 C. Notice of any meetings held pursuant to this section shall be provided at least three working days
 76 in advance of the date scheduled for the meeting. The notice shall include the date, time, place, and
 77 purpose for the meeting; shall identify the locations for the meeting; and shall include a telephone
 78 number that may be used at remote locations to notify the primary or central meeting location of any
 79 interruption in the telephonic or video broadcast of the meeting to the remote locations. Any interruption
 80 in the telephonic or video broadcast of the meeting shall result in the suspension of action at the
 81 meeting until repairs are made and public access restored.

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

88 E. Three working days' notice shall not be required for meetings authorized under this section *held in*
 89 *accordance with subsection G or* that are continued to address an emergency or to conclude the agenda
 90 of the meeting for which proper notice has been given, when the date, time, place, and purpose of the
 91 continued meeting are set during the meeting prior to adjournment. Public bodies conducting emergency
 92 meetings through electronic communication means shall comply with the provisions of subsection D
 93 requiring minutes of the meeting. The nature of the emergency shall be stated in the minutes.

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

- 97 1. The total number of electronic communication meetings held that year;
- 98 2. The dates and purposes of the meetings;
- 99 3. The number of sites for each meeting;
- 100 4. The types of electronic communication means by which the meetings were held;
- 101 5. The number of participants, including members of the public, at each meeting location;
- 102 6. The identity of the members of the public body recorded as absent and those recorded as present
 103 at each meeting location;
- 104 7. A summary of any public comment received about the electronic communication meetings; and
- 105 8. A written summary of the public body's experience using electronic communication meetings,
 106 including its logistical and technical experience.

107 G. *Any local governing body, school board, or any authority, board, bureau, commission, district, or*
 108 *agency of local government may meet by electronic communication means without a quorum of the*
 109 *public body physically assembled at one location when the Governor has declared a state of emergency*
 110 *in accordance with § 44-146.17, provided (i) the catastrophic nature of the declared emergency makes it*
 111 *impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is*
 112 *to address the emergency. The local public body convening a meeting in accordance with this subsection*
 113 *shall (a) give public notice using the best available method given the nature of the emergency, which*
 114 *notice shall be given contemporaneously with the notice provided members of the local public body*
 115 *conducting the meeting; (b) make arrangements for public access to such meeting; and (c) otherwise*
 116 *comply with the provisions of this section. The nature of the emergency and the fact that the meeting*
 117 *was held by electronic communication means shall be stated in the minutes.*

118 § 2.2-3714. Violations and penalties.

119 In a proceeding commenced against members of public bodies under § 2.2-3713 for a violation of
 120 §§ 2.2-3704, 2.2-3705.1 through 2.2-3705.8, 2.2-3706, 2.2-3707, 2.2-3708, 2.2-3708.1, 2.2-3710,

121 2.2-3711 or § 2.2-3712, the court, if it finds that a violation was willfully and knowingly made, shall
122 impose upon such member in his individual capacity, whether a writ of mandamus or injunctive relief is
123 awarded or not, a civil penalty of not less than \$250 nor more than \$1,000, which amount shall be paid
124 into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less
125 than \$1,000 nor more than \$2,500.

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