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## HOUSE BILL NO. 1149

Offered January 16, 2012

A BILL to amend and reenact §§ 2.2-3707, 2.2-3708, and 23-38.95 of the Code of Virginia, relating to the Freedom of Information Act; electronic communication meetings by local and regional public bodies.

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Patron—Dudenhefer

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Referred to Committee on General Laws

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

**1. That §§ 2.2-3707, 2.2-3708, and 23-38.95 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, 2.2-3708.1 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 their websites and on the electronic calendar maintained by the Virginia Information Technologies Agency commonly known as the Commonwealth Calendar. 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, but shall not prohibit or otherwise prevent any person from photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be open. No public body shall conduct a meeting required to be open in any building or facility where such recording devices are prohibited.

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

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59 committees or subcommittees appointed by the governing bodies or school boards of counties, cities and  
60 towns, except where the membership of any such commission, committee or subcommittee includes a  
61 majority of the governing body of the county, city or town or school board.

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

64 Minutes shall be in writing and shall include (i) the date, time, and location of the meeting; (ii) the  
65 members of the public body recorded as present and absent; and (iii) a summary of the discussion on  
66 matters proposed, deliberated or decided, and a record of any votes taken. In addition, for electronic  
67 communication meetings conducted in accordance with § 2.2-3708, minutes of state public bodies shall  
68 include (a) the identity of the members of the public body at each remote location identified in the  
69 notice who participated in the meeting through electronic communications means, (b) the identity of the  
70 members of the public body who were physically assembled at the primary or central meeting location,  
71 and (c) the identity of the members of the public body who were not present at the locations identified  
72 in clauses (a) and (b), but who monitored such meeting through electronic communications means.

73 § 2.2-3708. Electronic communication meetings; applicability; physical quorum required; notice;  
74 report.

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

82 B. Except as provided in subsection D of § 2.2-3707.01, state public bodies any public body may  
83 conduct any meeting wherein the public business is discussed or transacted through electronic  
84 communication means, provided (i) a quorum of the public body is physically assembled at one primary  
85 or central meeting location, (ii) notice of the meeting has been given in accordance with subsection C, B,  
86 and (iii) the remote locations, from which additional members of the public body participate through  
87 electronic communication means, are open to the public. All persons attending the meeting at any of the  
88 meeting locations shall be afforded the same opportunity to address the public body as persons attending  
89 the primary or central location. State public bodies, however, may meet by electronic communication  
90 means without a quorum of the public body physically assembled at one location when (a) the Governor  
91 has declared a state of emergency in accordance with § 44-146.17, (b) the meeting is necessary to take  
92 action to address the emergency, and (c) the public body otherwise complies with the provisions of this  
93 section.

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

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

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

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

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

1. The total number of electronic communication meetings held that year;
  2. The dates and purposes of the meetings;
  3. The number of sites for each meeting;
  4. The types of electronic communication means by which the meetings were held;
  5. The number of participants, including members of the public, at each meeting location;
  6. The identity of the members of the public body recorded as absent and those recorded as present at each meeting location;
  7. A summary of any public comment received about the electronic communication meetings; and
  8. A written summary of the public body's experience using electronic communication meetings, including its logistical and technical experience.
- ~~G.F. Any local governing~~ *public body, school board, or any authority, board, bureau, commission, district, or agency of local government* may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, provided (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to address the emergency. The ~~local~~ public body convening a meeting in accordance with this subsection shall (a) give public notice using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided members of the ~~local~~ public body conducting the meeting; (b) make arrangements for public access to such meeting; and (c) otherwise comply with the provisions of this section. The nature of the emergency and the fact that the meeting was held by electronic communication means shall be stated in the minutes.
- § 23-38.95. Public access to information.
- A covered institution shall continue to be subject to § 2.2-4342 and to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), but shall be entitled to conduct business pursuant to § 2.2-3709, in the case of a public institution of higher education to which that section applies, and, in all cases, may conduct business as a "state public body" for purposes of § 2.2-3708.