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**HOUSE BILL NO. 358**

Offered January 14, 2004

Prefiled January 12, 2004

*A BILL to amend and reenact §§ 2.2-3707, 2.2-3712 and 30-179 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-3704.1, relating to the Freedom of Information Act; posting by certain state public bodies; minutes.*

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 Referred to Committee on General Laws
 

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

**1. That §§ 2.2-3707, 2.2-3712 and 30-179 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 2.2-3704.1 as follows:**

*§ 2.2-3704.1. Posting of notice of rights and responsibilities by state public bodies; assistance by the Freedom of Information Advisory Council.*

*A. All state public bodies created in the executive branch of state government and subject to the provisions of this chapter shall make available the following information to the public upon request and shall post such information on the Internet:*

*1. A plain English explanation of the rights of a requester under this chapter, the procedures to obtain public records from the public body, and the responsibilities of the public body in complying with this chapter. For purposes of this subdivision "plain English" means written in nontechnical, readily understandable language using words of common everyday usage and avoiding legal terms and phrases or other terms and words of art whose usage or special meaning primarily is limited to a particular field or profession;*

*2. Contact information for the person designated by the public body to (i) assist a requester in making a request for records or (ii) respond to requests for public records; and*

*3. Any policy the public body has concerning the type of public records it routinely withholds from release as permitted by this chapter.*

*B. The Freedom of Information Advisory Council, created pursuant to § 30-178, shall assist in the development and implementation of the provisions of subsection A, upon request.*

*§ 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 § 2.2-3711.*

*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. Publication of meeting notices by electronic means 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*

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59 or (ii) at a public forum, candidate appearance, or debate, the purpose of which is to inform the  
60 electorate and not to transact public business or to hold discussions relating to the transaction of public  
61 business, even though the performance of the members individually or collectively in the conduct of  
62 public business may be a topic of discussion or debate at such public meeting. The notice provisions of  
63 this chapter shall not apply to informal meetings or gatherings of the members of the General Assembly.

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

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

75 Minutes, including draft minutes, and all other records of open meetings, including audio or  
76 audio/visual records shall be deemed public records and subject to the provisions of this chapter. ~~Audio~~  
77 ~~or audio/visual records of open meetings shall be public records that shall be produced in accordance~~  
78 ~~with § 2.2-3704.~~

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

82 § 2.2-3712. Closed meetings procedures; certification of proceedings.

83 A. No closed meeting shall be held unless the public body proposing to convene such meeting has  
84 taken an affirmative recorded vote in an open meeting approving a motion that (i) identifies the subject  
85 matter, (ii) states the purpose of the meeting and (iii) makes specific reference to the applicable  
86 exemption from open meeting requirements provided in § 2.2-3707 or subsection A of § 2.2-3711. The  
87 matters contained in such motion shall be set forth in detail in the minutes of the open meeting. A  
88 general reference to the provisions of this chapter, the authorized exemptions from open meeting  
89 requirements, or the subject matter of the closed meeting shall not be sufficient to satisfy the  
90 requirements for holding a closed meeting.

91 B. The notice provisions of this chapter shall not apply to closed meetings of any public body held  
92 solely for the purpose of interviewing candidates for the position of chief administrative officer. Prior to  
93 any such closed meeting for the purpose of interviewing candidates, the public body shall announce in  
94 an open meeting that such closed meeting shall be held at a disclosed or undisclosed location within  
95 fifteen days thereafter.

96 C. The public body holding a closed meeting shall restrict its discussion during the closed meeting  
97 only to those matters specifically exempted from the provisions of this chapter and identified in the  
98 motion required by subsection A.

99 D. At the conclusion of any closed meeting, the public body holding such meeting shall immediately  
100 reconvene in an open meeting and shall take a roll call or other recorded vote to be included in the  
101 minutes of that body, certifying that to the best of each member's knowledge (i) only public business  
102 matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public  
103 business matters as were identified in the motion by which the closed meeting was convened were  
104 heard, discussed or considered in the meeting by the public body. Any member of the public body who  
105 believes that there was a departure from the requirements of clauses (i) and (ii), shall so state prior to  
106 the vote, indicating the substance of the departure that, in his judgment, has taken place. The statement  
107 shall be recorded in the minutes of the public body.

108 E. Failure of the certification required by subsection D to receive the affirmative vote of a majority  
109 of the members of the public body present during a meeting shall not affect the validity or  
110 confidentiality of such meeting with respect to matters considered therein in compliance with the  
111 provisions of this chapter. The recorded vote and any statement made in connection therewith, shall  
112 upon proper authentication, constitute evidence in any proceeding brought to enforce the provisions of  
113 this chapter.

114 F. A public body may permit nonmembers to attend a closed meeting if such persons are deemed  
115 necessary or if their presence will reasonably aid the public body in its consideration of a topic that is a  
116 subject of the meeting.

117 G. Except as specifically authorized by law, in no event may any public body take action on matters  
118 discussed in any closed meeting, except at an open meeting for which notice was given as required by  
119 § 2.2-3707.

120 H. Minutes ~~may be taken~~ shall be recorded by audio or audio/visual means during any closed

~~meetings~~ meeting of a public body, ~~but shall not be required~~. Such minutes shall not be subject to mandatory public disclosure. *Where an action is brought pursuant to § 2.2-3713, a court may conduct an in camera review of the closed meeting recording to determine what portions, if any, shall be made available to the parties for use as evidence in the proceeding. The court may, for purposes of discovery, redact from the closed meeting recording any information protected by law. The provisions of this subsection shall not be construed to supersede the privacy or confidentiality provisions of state or federal law. Closed meeting recordings shall be kept by the public body for two years from the date of such meeting.*

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

The Council shall:

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

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

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

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

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

6. Report annually on or before December 1 of each year on its activities and findings regarding the Freedom of Information Act, including recommendations for changes in the law, to the Governor and the General Assembly.