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SENATE BILL NO. 36

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on March 7, 2024)

(Patron Prior to Substitute—Senator Locke)

*A BILL to amend and reenact § 2.2-3701 of the Code of Virginia, relating to the Virginia Freedom of Information Act; definitions.***Be it enacted by the General Assembly of Virginia:****1. That § 2.2-3701 of the Code of Virginia is amended and reenacted as follows:****§ 2.2-3701. Definitions.**

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

"All-virtual public meeting" means a public meeting (i) conducted by a public body, other than those excepted pursuant to subsection C of § 2.2-3708.3, using electronic communication means, (ii) during which all members of the public body who participate do so remotely rather than being assembled in one physical location, and (iii) to which public access is provided through electronic communication means.

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

"Electronic communication" means the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

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

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

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through electronic communication means pursuant to § 2.2-3708.2 or 2.2-3708.3, 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. Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body (a) 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, *and no discussion or transaction of public business takes place among the members of the public body* or (b) at a public forum, *informational gathering*, candidate appearance, *meeting of another public body*, or debate, the purpose of which is to inform the electorate *or to gather information from the public* and not to transact public business or to hold discussions relating to the transaction of public business, *where no discussion or transaction of public business takes place among the members of the public body*, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion ~~or~~, debate, *or question presented by others* at such public meeting, shall be deemed a "meeting" subject to the provisions of this chapter. *The appointment of more than two members of a public body to another public body does not constitute a meeting of the first public body. For purposes of this definition of "meeting" only, the term "public business" means any activity a public body has undertaken or proposes to undertake on behalf of the people it represents.*

"Official public government website" means any Internet site controlled by a public body and used, among any other purposes, to post required notices and other content pursuant to this chapter on behalf of the public body.

"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 counties, cities, and towns, municipal councils, governing bodies of counties, school boards, and planning commissions; governing boards 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.

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

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

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

71 "Remote participation" means participation by an individual member of a public body by electronic
72 communication means in a public meeting where a quorum of the public body is otherwise physically
73 assembled.

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

77 "Trade secret" means the same as that term is defined in the Uniform Trade Secrets Act (§ 59.1-336
78 et seq.).

79 **2. That the provisions of this act are declarative of existing law.**