

SENATE BILL NO. 36

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology

on _____)

(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

27 as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the
28 constituent membership, wherever held, with or without minutes being taken, whether or not votes are
29 cast, of any public body. Neither the gathering of employees of a public body nor the gathering or
30 attendance of two or more members of a public body (a) at any place or function where no part of the
31 purpose of such gathering or attendance is the discussion or transaction of any public business, ~~and~~ such
32 gathering or attendance was not called or prearranged with any purpose of discussing or transacting any
33 business of the public body, and no discussion or transaction of public business takes place among the
34 members of the public body or (b) at a public forum, informational gathering, candidate appearance, or
35 debate, the purpose of which is to inform the electorate or to gather information from the public and not
36 to transact public business or to hold discussions relating to the transaction of public business, where no
37 discussion or transaction of public business takes place among the members of the public body, even
38 though the performance of the members individually or collectively in the conduct of public business may
39 be a topic of discussion or debate at such public meeting, shall be deemed a "meeting" subject to the
40 provisions of this chapter. The attendance of members of a public body at the meeting of another public
41 body does not constitute a meeting of the first public body so long as those members attending the other
42 public body's meeting do not discuss or transact any public business. For purposes of the gatherings
43 referenced in clauses (a) and (b), and educational trainings open to and actually attended by members of
44 multiple public bodies from multiple jurisdictions, no discussion or transaction of public business shall be
45 deemed to occur so long as the primary purpose of the meeting is not to discuss or transact public business
46 and a majority of members of a particular public body do not discuss among themselves public business.

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

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

51 "Public body" means any legislative body, authority, board, bureau, commission, district, or
52 agency of the Commonwealth or of any political subdivision of the Commonwealth, including counties,
53 cities, and towns, municipal councils, governing bodies of counties, school boards, and planning

54 commissions; governing boards of public institutions of higher education; and other organizations,
55 corporations, or agencies in the Commonwealth supported wholly or principally by public funds. It shall
56 include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of
57 directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee,
58 subcommittee, or other entity however designated of the public body created to perform delegated
59 functions of the public body or to advise the public body. It shall not exclude any such committee,
60 subcommittee, or entity because it has private sector or citizen members. Corporations organized by the
61 Virginia Retirement System are "public bodies" for purposes of this chapter.

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

66 "Public business" means activity that a public body has undertaken or proposed to undertake on
67 behalf of the people it represents.

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

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

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

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

81 "Trade secret" means the same as that term is defined in the Uniform Trade Secrets Act (§ 59.1-
82 336 et seq.).

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

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