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## HOUSE BILL NO. 2223

Offered January 11, 2017

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A *BILL to amend and reenact §§ 2.2-3707 and 23.1-1303 of the Code of Virginia, relating to the Virginia Freedom of Information Act; right to speak at open meetings.*

Patrons—Kory, Cline and LeMunyon

Referred to Committee on General Laws

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

**1. That §§ 2.2-3707 and 23.1-1303 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 notice shall state 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. *Every public body shall afford an opportunity for public comment during any open meeting. Public comment periods must be noticed on a public body's agenda. The public body has discretion in where it places the public comment period on its agenda. The public body may adopt reasonable rules governing the public comment portion of the meeting, including reasonable restrictions on the time, place, and manner of public comment.*

H. The notice provisions of this chapter shall not apply to informal meetings or gatherings of the members of the General Assembly.

~~H.~~ I. 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. J. 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 committees or subcommittees appointed by the governing bodies or school boards of counties, cities and towns, except where the membership of any such commission, committee or

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59 subcommittee includes a majority of the governing body of the county, city or town or school board.

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

62 Minutes shall be in writing and shall include ~~(i)~~ (a) the date, time, and location of the meeting; ~~(ii)~~  
63 (b) the members of the public body recorded as present and absent; and ~~(iii)~~ (c) a summary of the  
64 discussion on matters proposed, deliberated or decided, and a record of any votes taken. In addition, for  
65 electronic communication meetings conducted in accordance with § 2.2-3708, minutes of state public  
66 bodies shall include ~~(a)~~ (1) the identity of the members of the public body at each remote location  
67 identified in the notice who participated in the meeting through electronic communications means, ~~(b)~~  
68 (2) the identity of the members of the public body who were physically assembled at the primary or  
69 central meeting location, and ~~(c)~~ (3) the identity of the members of the public body who were not  
70 present at the locations identified in clauses ~~(a)~~ (1) and ~~(b)~~ (2), but who monitored such meeting through  
71 electronic communications means.

72 **§ 23.1-1303. Governing boards; duties.**

73 A. For purposes of this section, "intellectual property" means (i) a potentially patentable machine,  
74 article of manufacture, composition of matter, process, or improvement in any of those; (ii) an issued  
75 patent; (iii) a legal right that inheres in a patent; or (iv) anything that is copyrightable.

76 B. The governing board of each public institution of higher education shall:

77 1. Adopt and post conspicuously on its website bylaws for its own governance, including provisions  
78 that (i) establish the requirement of transparency, to the extent required by law, in all board actions; (ii)  
79 describe the board's obligations under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), as  
80 set forth in subdivision B 10 of § 23.1-1301, including the requirements that (a) the board record  
81 minutes of each open meeting and post the minutes on the board's website, in accordance with  
82 subsection I J of § 2.2-3707 and § 2.2-3707.1, (b) discussions and actions on any topic not specifically  
83 exempted by § 2.2-3711 be held in an open meeting, (c) the board give public notice of all meetings, in  
84 accordance with subsection C of § 2.2-3707, and (d) any action taken in a closed meeting be approved  
85 in an open meeting before it can have any force or effect, in accordance with subsection B of  
86 § 2.2-3711; and (iii) require that the board invite the Attorney General's appointee or representative to  
87 all meetings of the board, executive committee, and board committees;

88 2. Establish regulations or institution policies for the acceptance and assistance of students that  
89 include provisions (i) that specify that individuals who have knowingly and willfully failed to meet the  
90 federal requirement to register for the selective service are not eligible to receive any state direct student  
91 assistance, (ii) that specify that the accreditation status of a public high school in the Commonwealth  
92 shall not be considered in making admissions determinations for students who have earned a diploma  
93 pursuant to the requirements established by the Board of Education, and (iii) relating to the admission of  
94 certain graduates of comprehensive community colleges as set forth in § 23.1-907;

95 3. Assist the Council in enforcing the provisions relating to eligibility for financial aid;

96 4. Notwithstanding any other provision of state law, establish policies and procedures requiring the  
97 notification of the parent of a dependent student when such student receives mental health treatment at  
98 the institution's student health or counseling center and such treatment becomes part of the student's  
99 educational record in accordance with the federal Health Insurance Portability and Accountability Act  
100 (42 U.S.C. § 1320d et seq.) and may be disclosed without prior consent as authorized by the federal  
101 Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations (34 C.F.R. Part  
102 99). Such notification shall only be required if it is determined that there exists a substantial likelihood  
103 that, as a result of mental illness the student will, in the near future, (i) cause serious physical harm to  
104 himself or others as evidenced by recent behavior or any other relevant information or (ii) suffer serious  
105 harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs.  
106 However, notification may be withheld if any person licensed to diagnose and treat mental, emotional,  
107 or behavioral disorders by a health regulatory board within the Department of Health Professions who is  
108 treating the student has made a part of the student's record a written statement that, in the exercise of  
109 his professional judgment, the notification would be reasonably likely to cause substantial harm to the  
110 student or another person. No public institution of higher education or employee of a public institution  
111 of higher education making a disclosure pursuant to this subsection is civilly liable for any harm  
112 resulting from such disclosure unless such disclosure constitutes gross negligence or willful misconduct  
113 by the institution or its employees;

114 5. Establish policies and procedures requiring the release of the educational record of a dependent  
115 student, as defined by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g), to a  
116 parent at his request;

117 6. Establish programs to seek to ensure that all graduates have the technology skills necessary to  
118 compete in the twenty-first century and that all students matriculating in teacher-training programs  
119 receive instruction in the effective use of educational technology;

120 7. Establish policies for the discipline of students who participate in varsity intercollegiate athletics,

including a provision requiring an annual report by the administration of the institution to the governing board regarding enforcement actions taken pursuant to such policies;

8. In addition to all meetings prescribed in Chapters 14 (§ 23.1-1400 et seq.) through 29 (§ 23.1-2900 et seq.), meet with the chief executive officer of the institution at least once annually, in a closed meeting pursuant to subdivision A 1 of § 2.2-3711 and deliver an evaluation of the chief executive officer's performance. Any change to the chief executive officer's employment contract during any such meeting or any other meeting of the board shall be made only by a vote of the majority of the board's members;

9. If human research, as defined in § 32.1-162.16, is conducted at the institution, adopt regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. Such regulations shall require the human research committee to submit to the Governor, the General Assembly, and the chief executive officer of the institution or his designee at least annually a report on the human research projects reviewed and approved by the committee and require the committee to report any significant deviations from approved proposals;

10. Submit the annual financial statements for the fiscal year ending the preceding June 30 and the accounts and status of any ongoing capital projects to the Auditor of Public Accounts for the audit of such statements pursuant to § 30-133;

11. Submit to the General Assembly and the Governor an annual executive summary of its interim activity and work no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website;

12. Make available to any interested party upon request a copy of the portion of the most recent report of the Uniform Crime Reporting Section of the Department of State Police entitled "Crime in Virginia" pertaining to institutions of higher education;

13. Adopt policies or institution regulations regarding the ownership, protection, assignment, and use of intellectual property and provide a copy of such policies to the Governor and the Joint Commission on Technology and Science. All employees, including student employees, of public institutions of higher education are bound by the intellectual property policies of the institution employing them; and

14. Adopt policies that are supportive of the intellectual property rights of matriculated students who are not employed by such institution.