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SENATE BILL NO. 1431

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on January 28, 2019)

(Patron Prior to Substitute—Senator Obenshain)

A BILL to amend and reenact § 2.2-3713 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-3704.3, relating to the Virginia Freedom of Information Act; training requirements; proceedings for enforcement.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3713 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-3704.3 as follows:

§ 2.2-3704.3. *Training for local officials.*

A. The Virginia Freedom of Information Advisory Council (the Council) shall provide online training sessions for local elected officials on the provisions of this chapter.

B. Each local elected official shall complete a training session described in subsection A within two months after assuming the local elected office and thereafter at least once during each consecutive period of two calendar years commencing with the date on which he last completed a training session, for as long as he holds such office.

C. The clerk of each governing body or school board shall maintain records indicating the names of elected officials subject to the training requirements in subsection B and the dates on which each such official completed training sessions satisfying such requirements. Such records shall be maintained for five years in the office of the clerk of the respective governing body or school board.

§ 2.2-3713. *Proceedings for enforcement of chapter.*

A. Any person, including the attorney for the Commonwealth acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause. Such petition may be brought in the name of the person notwithstanding that a request for public records was made by the person's attorney in his representative capacity. Venue for the petition shall be addressed as follows:

1. In a case involving a local public body, to the general district court or circuit court of the county or city from which the public body has been elected or appointed to serve and in which such rights and privileges were so denied;

2. In a case involving a regional public body, to the general district or circuit court of the county or city where the principal business office of such body is located; and

3. In a case involving a board, bureau, commission, authority, district, institution, or agency of the state government, including a public institution of higher education, or a standing or other committee of the General Assembly, to the general district court or the circuit court of the residence of the aggrieved party or of the City of Richmond.

B. In any action brought before a general district court, a corporate petitioner may appear through its officer, director or managing agent without the assistance of counsel, notwithstanding any provision of law or Rule of the Supreme Court of Virginia to the contrary.

C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall be heard within seven days of the date when the same is made, provided the party against whom the petition is brought has received a copy of the petition at least three working days prior to filing. *However, if the petition or the affidavit supporting the petition for mandamus or injunction alleges violations of the open meetings requirements of this chapter, the three day notice to the party against whom the petition is brought shall not be required.* The hearing on any petition made outside of the regular terms of the circuit court of a locality that is included in a judicial circuit with another locality or localities shall be given precedence on the docket of such court over all cases that are not otherwise given precedence by law.

D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorneys' attorney fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position.

60 E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of
61 proof to establish an exclusion by a preponderance of the evidence. No court shall be required to accord
62 any weight to the determination of a public body as to whether an exclusion applies. Any failure by a
63 public body to follow the procedures established by this chapter shall be presumed to be a violation of
64 this chapter.

65 F. Failure by any person to request and receive notice of the time and place of meetings as provided
66 in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred by this
67 chapter.

68 **2. That the provisions of § 2.2-3704.3 of the Code of Virginia, as created by this act, shall become**
69 **effective on July 1, 2020.**

70 **3. That a local elected official holding office on July 1, 2020, shall complete the training required**
71 **by § 2.2-3704.3 of the Code of Virginia, as created by this act, no later than December 31, 2020.**