

LD0023661

SENATE BILL NO. 1

Offered January 12, 1994

Prefiled November 17, 1993

A BILL to amend and reenact § 2.1-344 of the Code of Virginia, relating to executive or closed meetings under the Freedom of Information Act.

Patrons—Gartlan and Reasor; Delegate: Cohen

Referred to the Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That § 2.1-344 of the Code of Virginia is amended and reenacted as follows:**

§ 2.1-344. Executive or closed meetings.

A. Public bodies are not required to conduct executive or closed meetings. However, should a public body determine that an executive or closed meeting is desirable, such meeting shall be held only for the following purposes:

1. Discussion, consideration or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees or employees of any public body; and evaluation of performance of departments or schools of state institutions of higher education where such matters regarding such specific individuals might be affected by such evaluation. Any teacher shall be permitted to be present during an executive session or closed meeting in which there is a discussion or consideration of a disciplinary matter which involves the teacher and some student or students and the student or students involved in the matter are present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.

2. Discussion or consideration of admission or disciplinary matters concerning any student or students of any state institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at an executive or closed meeting, if such student, parents or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the condition, acquisition or use of real property for public purpose, or of the disposition of publicly held property, or of plans for the future of a state institution of higher education which could affect the value of property owned or desirable for ownership by such institution.

4. The protection of the privacy of individuals in personal matters not related to public business.

5. Discussion concerning a prospective business or industry or expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.

6. The investing of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.

7. Consultation with legal counsel and briefings by staff members, consultants or attorneys, pertaining to actual or probable litigation, or other specific legal matters requiring the provision of legal advice by counsel.

8. In the case of boards of visitors of state institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants and contracts made by a foreign government, a foreign legal entity or a foreign person and accepted by a state institution of higher education shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

9. In the case of the boards of trustees of the Virginia Museum of Fine Arts and The Science Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

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60 10. Discussion or consideration of honorary degrees or special awards.

61 11. Discussion or consideration of tests or examinations or other documents excluded from this
62 chapter pursuant to § 2.1-342 B 9.

63 12. Discussion, consideration or review by the appropriate House or Senate committees of possible
64 disciplinary action against a member arising out of the possible inadequacy of the disclosure statement
65 filed by the member, provided the member may request in writing that the committee meeting not be
66 conducted in executive session.

67 13. Discussion of strategy with respect to the negotiation of a siting agreement or to consider the
68 terms, conditions, and provisions of a siting agreement if the governing body in open meeting finds that
69 an open meeting will have a detrimental effect upon the negotiating position of the governing body or
70 the establishment of the terms, conditions and provisions of the siting agreement, or both. All
71 discussions with the applicant or its representatives may be conducted in a closed meeting or executive
72 session.

73 14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic
74 activity and estimating general and nongeneral fund revenues.

75 15. Discussion or consideration of medical and mental records excluded from this chapter pursuant to
76 § 2.1-342 B 3, and those portions of disciplinary proceedings by any regulatory board within the
77 Department of Professional and Occupational Regulation or Department of Health Professions conducted
78 pursuant to § 9-6.14:11 or § 9-6.14:12 during which the board deliberates to reach a decision.

79 16. Discussion, consideration or review of State Lottery Department matters related to proprietary
80 lottery game information and studies or investigations exempted from disclosure under subdivisions 37
81 and 38 of subsection B of § 2.1-342.

82 17. Those portions of meetings by local government crime commissions where the identity of, or
83 information tending to identify, individuals providing information about crimes or criminal activities
84 under a promise of anonymity is discussed or disclosed.

85 18. Discussion, consideration, review and deliberations by local community corrections resources
86 boards regarding the placement in community diversion programs of individuals previously sentenced to
87 state correctional facilities.

88 19. Those portions of meetings of the Virginia Health Services Cost Review Council in which the
89 Council discusses filings of individual health care institutions which are confidential pursuant to
90 subsection B of § 9-159.

91 20. Those portions of meetings in which the Board of Corrections discusses or discloses the identity
92 of, or information tending to identify, any prisoner who (i) provides information about crimes or
93 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the
94 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
95 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

96 21. Discussion of plans to protect public safety as it relates to terrorist activity.

97 22. In the case of corporations organized by the Virginia Retirement System, RF&P Corporation and
98 its wholly owned subsidiaries, discussion or consideration of (i) proprietary information provided by, and
99 financial information concerning, coventurers, partners, lessors, lessees, or investors; and (ii) the
100 condition, acquisition, disposition, use, leasing, development, coventuring, or management of real estate
101 the disclosure of which would have a substantial adverse impact on the value of such real estate or
102 result in a competitive disadvantage to the corporation or subsidiary.

103 23. *Those portions of meetings of the Virginia Code Commission in which the Commission discusses,*
104 *considers, reviews or deliberates proposals submitted by vendors under § 9-77.7 or § 9-77.8.*

105 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in an
106 executive or closed meeting shall become effective unless the public body, following the meeting,
107 reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule,
108 contract, regulation or motion which shall have its substance reasonably identified in the open meeting.
109 Nothing in this section shall be construed to require the board of directors of any authority created
110 pursuant to the Industrial Development and Revenue Bond Act (§ 15.1-1373 et seq.), or any public body
111 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry
112 to which subdivision A 5 of this section applies. However, such business or industry must be identified
113 as a matter of public record at least thirty days prior to the actual date of the board's authorization of
114 the sale or issuance of such bonds.

115 C. Public officers improperly selected due to the failure of the public body to comply with the other
116 provisions of this section shall be de facto officers and, as such, their official actions are valid until they
117 obtain notice of the legal defect in their election.

118 D. Nothing in this section shall be construed to prevent the holding of conferences between two or
119 more public bodies, or their representatives, but these conferences shall be subject to the same
120 regulations for holding executive or closed sessions as are applicable to any other public body.