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HOUSE BILL NO. 1206

Offered January 22, 1996

A BILL to amend and reenact §§ 2.1-341, 2.1-343, and 2.1-344 of the Code of Virginia, relating to the Freedom of Information Act.

Patron—Katzen

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-341, 2.1-343, and 2.1-344 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-341. Definitions.

The following terms, whenever used or referred to in this chapter, shall have the following meanings, unless a different meaning clearly appears from the context:

"Criminal incident information" means a general description of the criminal activity reported, the date and general location the alleged crime was committed, the identity of the investigating officer, and a general description of any injuries suffered or property damaged or stolen; however, the identity of any victim, witness, undercover officer, or investigative techniques or procedures need not but may be disclosed unless disclosure is prohibited or restricted under § 19.2-11.2. The identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.

"Executive meeting" or "closed meeting" means a meeting from which the public is excluded.

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.1-343.1, 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, including any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties; municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of state institutions of higher education; and other organizations, corporations or agencies in the Commonwealth, supported wholly or principally by public funds. The notice provisions of this chapter shall not apply to the said informal meetings or gatherings of the members of the General Assembly. Nothing in this chapter shall be construed to make unlawful the gathering or attendance of two or more members of a body or entity 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 body or entity. The gathering of employees of a public body shall not be deemed a "meeting" subject to the provisions of this chapter. However, any time three members, or a quorum if less than three, of the constituent membership of a public body gather where any part of the purpose of such gathering is a public one, and whether or not (i) such gathering was called as a meeting of the public body or any committee, ad-hoc committee, or other organizational unit thereof or (ii) all members present participate in some fashion in the gathering, it shall be deemed a "meeting" for the purposes of this chapter, including the notice provisions.

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 § 2.1-343.1 or as may specifically be provided in Title 54.1 for the summary suspension of professional licenses.

"Official records" means all written or printed books, papers, letters, documents, maps and tapes, photographs, films, sound recordings, reports or other material, regardless of physical form or characteristics, prepared, owned, or in the possession of a public body or any employee or officer of a public body in the transaction of public business.

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

"Public body" means any of the groups, agencies or organizations enumerated in the definition of "meeting" as provided in this section, including any committees or subcommittees of the public body created to perform delegated functions of the public body or to advise the public body. Corporations organized by the Virginia Retirement System, RF&P Corporation and its wholly owned subsidiaries also are "public bodies" for purposes of this chapter.

"Scholastic records" means those records, files, documents, and other materials containing

INTRODUCED

HB1206

60 information about a student and maintained by a public body which is an educational agency or
 61 institution or by a person acting for such agency or institution, but, for the purpose of access by a
 62 student, does not include (i) financial records of a parent or guardian nor (ii) records of instructional,
 63 supervisory, and administrative personnel and educational personnel ancillary thereto, which are in the
 64 sole possession of the maker thereof and which are not accessible or revealed to any other person except
 65 a substitute.

66 § 2.1-343. Meetings to be public; notice of meetings; recordings; minutes; voting.

67 Except as otherwise specifically provided by law and except as provided in §§ 2.1-344 and 2.1-345,
 68 all meetings of public bodies shall be public meetings, including meetings and work sessions during
 69 which no votes are cast or any decisions made. Notice including the time, date and place of each
 70 meeting shall be furnished to any citizen of the Commonwealth who requests such information. Notices
 71 for meetings of public bodies of the Commonwealth on which there is at least one member appointed by
 72 the Governor shall state whether or not public comment will be received at the meeting, and, if so, the
 73 approximate points during the meeting public comment will be received. Requests to be notified on a
 74 continual basis shall be made at least once a year in writing and include name, address, zip code and
 75 organization of the requester. Notice, reasonable under the circumstance, of special or emergency
 76 meetings shall be given contemporaneously with the notice provided members of the public body
 77 conducting the meeting.

78 Unless otherwise exempt, at least one copy of all agenda packets and materials furnished to members
 79 of a public body for a meeting shall be made available for inspection by the public at the same time
 80 such documents are furnished to the members of the public body.

81 *Unless otherwise exempt, copies of all agenda packets and materials furnished to members of a*
 82 *public body for a meeting shall be made available at the same time to any person who has properly*
 83 *filed a request for records pursuant to § 2.1-342.*

84 Any person may photograph, film, record or otherwise reproduce any portion of a meeting required
 85 to be open. The public body conducting the meeting may adopt rules governing the placement and use
 86 of equipment necessary for broadcasting, photographing, filming or recording a meeting to prevent
 87 interference with the proceedings.

88 Voting by secret or written ballot in an open meeting shall be a violation of this chapter.

89 Minutes shall be recorded at all public meetings. However, minutes shall not be required to be taken
 90 at deliberations of (i) standing and other committees of the General Assembly, (ii) legislative interim
 91 study commissions and committees, including the Virginia Code Commission, (iii) study committees or
 92 commissions appointed by the Governor, or (iv) study commissions or study committees, or any other
 93 committees or subcommittees appointed by the governing bodies or school boards of counties, cities and
 94 towns, except where the membership of any such commission, committee or subcommittee includes a
 95 majority of the governing body of the county, city or town or school board.

96 § 2.1-344. Executive or closed meetings.

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

100 1. ~~Discussion, consideration or interviews~~ *Consideration of a specific individual who is a prospective*
 101 ~~candidate~~ *candidate* for employment; ~~assignment,~~ appointment, promotion, ~~performance,~~ demotion,
 102 ~~salaries, or disciplining or;~~ *consideration of the offered* resignation of specific public officers, appointees
 103 or employees of any public body; ~~and~~ or evaluation of performance of departments or schools of state
 104 institutions of higher education where such matters regarding such specific individuals might be affected
 105 by such evaluation. Any *public officer, appointee, employee or teacher* shall be permitted to be present
 106 during an executive session or closed meeting in which there is a discussion or consideration of a
 107 disciplinary matter ~~which involves the teacher and some student or students and the student or students~~
 108 ~~involved in the matter are present,~~ provided ~~the~~ *such officer, appointee, employee or teacher* makes a
 109 written request to be present to the presiding officer *or clerk* of the appropriate board.

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

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

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

121 5. Discussion concerning a prospective business or industry or expansion of an existing business or

122 industry where no previous announcement has been made of the business' or industry's interest in
123 locating or expanding its facilities in the community, *and the public body has not previously met in*
124 *executive session in the last twelve months to discuss such business or industry.*

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

127 7. Consultation with legal counsel ~~and briefings by staff members, consultants or attorneys,~~
128 ~~pertaining to actual or probable litigation, or other specific legal matters requiring the provision of legal~~
129 ~~advice by counsel~~ *actual claims filed against the public body.*

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

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

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

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

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

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

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

161 15. Discussion or consideration of medical and mental records excluded from this chapter pursuant to
162 § 2.1-342 B 3, and those portions of disciplinary proceedings by any regulatory board within the
163 Department of Professional and Occupational Regulation or Department of Health Professions conducted
164 pursuant to § 9-6.14:11 or § 9-6.14:12 during which the board deliberates to reach a decision.

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

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

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

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

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

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

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

189 23. Those portions of meetings in which individual child death cases are discussed by the State Child
190 Fatality Review Team established pursuant to § 32.1-283.1.

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

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

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