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SENATE BILL NO. 155

Offered January 14, 1998

A BILL to amend and reenact §§ 2.1-341, 2.1-343, and 2.1-343.1 of the Code of Virginia, relating to the Virginia Freedom of Information Act; definitions; notice; electronic communication meetings.

Patrons—Newman, Howell, Schrock and Ticer; Delegates: Almand, Bennett, Diamonstein, May, Plum and Scott

Referred to the Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-341, 2.1-343, and 2.1-343.1 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.

"Electronic communication means" means any video, telephonic, or other communication method which consists of, pertains to, is based on, is operated by, or otherwise involves the control of electrons or other charge carriers to exchange, send, receive, or in any way transmit the public business in a meeting.

"Emergency" means an unforeseen circumstance that renders the notice required by § 2.1-343 impossible or impracticable and that requires immediate action.

"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~~ *electronic communication means* 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 public body (i) 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 public body or (ii) at a public meeting whose purpose is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting. The gathering of employees of a public body shall not be deemed a "meeting" subject to the provisions of this chapter.

~~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 Meetings may be held by electronic communication means pursuant to § 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

60 "meeting" as provided in this section, including any committees or subcommittees of the public body
61 created to perform delegated functions of the public body or to advise the public body. Corporations
62 organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

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

70 § 2.1-343. Meetings to be public; notice of meetings; recordings; minutes; voting.

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

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

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

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

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

100 § 2.1-343.1. Electronic communication meetings.

101 A. It is a violation of this chapter for any political subdivision or any governing body, authority,
102 board, bureau, commission, district or agency of local government to conduct a meeting wherein the
103 public business is discussed or transacted through ~~telephonic, video, any electronic or other~~
104 communication means where the members are not physically assembled. Nothing in this section shall be
105 construed to prohibit the use of interactive audio or video means to expand public participation.

106 B. For purposes of subsections B through F of this section, "public body" means any public body of
107 the Commonwealth, as provided in the definitions of "meeting" and "public body" in § 2.1-341, but
108 ~~excluding shall exclude~~ any political subdivision or any governing body, authority, board, bureau,
109 commission, district or agency of local government. Such public bodies may conduct any meeting,
110 except executive or closed meetings held pursuant to § 2.1-344, wherein the public business is discussed
111 or transacted through ~~telephonic or video~~*electronic communication* means. ~~Where a quorum of a public~~
112 ~~body of the Commonwealth is physically assembled at one location for the purpose of conducting a~~
113 ~~meeting authorized under this subsection, additional members of such public body may participate in the~~
114 ~~meeting through telephonic means provided such participation is available to the public.~~*For purposes of*
115 *establishing a quorum, every location where a member of the public body is physically present to*
116 *discuss or transact the public business through any electronic communication means in a "meeting" as*
117 *defined in § 2.1-341 shall be (i) in Virginia and (ii) open and accessible to the public. After a quorum is*
118 *established, members of the public body who are not physically present (i) in Virginia or (ii) at a*
119 *meeting location which is open and accessible to the public, may participate in the meeting but shall not*
120 *be entitled, under any circumstances, to vote on any matter authorizing the transaction of any public*
121 *business.*

C. Notice of any meetings held pursuant to this section shall be provided at least thirty days in advance of the date scheduled for the meeting. The notice shall include the date, time, place and purpose for the meeting and shall identify the location or locations for the meeting in the same manner as required by § 2.1-343. All locations for the meeting shall be made accessible to the public. All persons attending the meeting at any of the meeting locations location where a member of the public body is physically present in Virginia at a location which is open and accessible to the public shall be afforded the same an opportunity to address the public body as persons attending the primary or central location. Any interruption in the telephonic or video broadcast electronic communication of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored.

Thirty-day notice shall not be required for telephonic or video Notice for electronic communication meetings continued to (i) address an emergency situation as provided in subsection F of this section as defined in § 2.1-341 or to (ii) conclude the agenda of a telephonic or video an electronic communication meeting of the public body for which the proper notice has been given, when the date, time, place and purpose of the continued meeting are set during the meeting prior to adjournment, shall be made in the same manner as required by § 2.1-343.

Public bodies conducting emergency meetings through electronic communications means shall comply with the provisions of subsection D requiring minutes, recordation, and preservation of the audio or audio/visual recording of the meeting. The basis for the emergency meeting shall be stated in the minutes.

The public body shall provide the Director of the Department of Information Technology with notice of all public meetings held through telephonic or video means pursuant to this section.

D. An agenda and materials which will be distributed to members of the public body and which have been made available to the staff of the public body in sufficient time for duplication and forwarding to all location sites where public access will be provided shall be made available to the public at the time of the meeting. Minutes of all meetings held by telephonic or video electronic communication means shall be recorded as required by § 2.1-343. Votes taken during any meeting conducted through telephonic or video electronic communication means shall be recorded by name in roll-call fashion and included in the minutes. In addition, the public body shall make an audio recording of the meeting, if a telephonic medium an audio communication means is used, or an audio/visual recording, if the meeting is held by video audio/visual communication means. The recording shall be preserved by the public body for a period of three years following the date of the meeting and shall be available to the public.

E. No more than twenty-five percent of all meetings held annually by a public body, including meetings of any ad hoc or standing committees, may be held by telephonic or video means. Any By September 1 of each year, any public body which meets by telephonic or video electronic communication means shall file with the Director of the Department of Information Technology by July 1 of each year (or its successor agency) a statement identifying report of the total number of electronic communication meetings held during the preceding fiscal year, the dates on which the meetings were held and, the number and purpose of those conducted through telephonic or video means the meetings, and the type of electronic communication means by which the meetings were held.

F. Notwithstanding the limitations imposed by subsection E of this section, a public body may meet by telephonic or video means as often as needed if an emergency exists and the public body is unable to meet in regular session. As used in this subsection "emergency" means an unforeseen circumstance rendering the notice required by this section, or by § 2.1-343 of this chapter, impossible or impracticable and which circumstance requires immediate action. Public bodies conducting emergency meetings through telephonic or video means shall comply with the provisions of subsection D requiring minutes, recordation and preservation of the audio or audio/visual recording of the meeting. The basis for the emergency shall be stated in the minutes. It shall be a violation of this chapter for any public body or any member thereof to use the provisions of this section to circumvent the spirit or the letter of this chapter to discuss or act upon any matter over which the public body has supervision, control, jurisdiction, authority, or advisory powers.