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HOUSE BILL NO. 358

House Amendments in [] — January 29, 2004

A BILL to amend and reenact §§ 2.2-3707 [, ~~2.2-3712~~] and 30-179 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-3704.1, relating to the Freedom of Information Act; posting by certain state public bodies; minutes.

Patron Prior to Engrossment—Delegate Suit

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3707 [, ~~2.2-3712~~] and 30-179 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 2.2-3704.1 as follows:

§ 2.2-3704.1. Posting of notice of rights and responsibilities by state public bodies; assistance by the Freedom of Information Advisory Council.

A. All state public bodies created in the executive branch of state government and subject to the provisions of this chapter shall make available the following information to the public upon request and shall post such information on the Internet:

1. A plain English explanation of the rights of a requester under this chapter, the procedures to obtain public records from the public body, and the responsibilities of the public body in complying with this chapter. For purposes of this subdivision "plain English" means written in nontechnical, readily understandable language using words of common everyday usage and avoiding legal terms and phrases or other terms and words of art whose usage or special meaning primarily is limited to a particular field or profession;

2. Contact information for the person designated by the public body to (i) assist a requester in making a request for records or (ii) respond to requests for public records; and

3. Any policy the public body has concerning the type of public records it routinely withholds from release as permitted by this chapter.

B. The Freedom of Information Advisory Council, created pursuant to § 30-178, shall assist in the development and implementation of the provisions of subsection A, upon request.

§ 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 § 2.2-3711.

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, 2.2-3709 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. Publication of meeting notices by electronic means 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 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. Nothing in this chapter shall be construed to prohibit 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 forum, candidate appearance, or debate, the purpose of which is to inform the

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59 electorate and not to transact public business or to hold discussions relating to the transaction of public
60 business, even though the performance of the members individually or collectively in the conduct of
61 public business may be a topic of discussion or debate at such public meeting. The notice provisions of
62 this chapter shall not apply to informal meetings or gatherings of the members of the General Assembly.

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

67 I. Minutes shall be recorded at all open meetings. However, minutes shall not be required to be taken
68 at deliberations of (i) standing and other committees of the General Assembly, (ii) legislative interim
69 study commissions and committees, including the Virginia Code Commission, (iii) study committees or
70 commissions appointed by the Governor, or (iv) study commissions or study committees, or any other
71 committees or subcommittees appointed by the governing bodies or school boards of counties, cities and
72 towns, except where the membership of any such commission, committee or subcommittee includes a
73 majority of the governing body of the county, city or town or school board.

74 Minutes, including draft minutes, and all other records of open meetings, including audio or
75 audio/visual records shall be deemed public records and subject to the provisions of this chapter. Audio
76 or audio/visual records of open meetings shall be public records that shall be produced in accordance
77 with § 2.2-3704.

78 *Minutes shall include, but are not limited to, (i) the date, time and location of the meeting; (ii) the*
79 *members of the public body recorded as present and absent; and (iii) a summary of the discussion on*
80 *matters proposed, deliberated or decided, and a record of any votes taken.*

81 [§ 2.2-3712: Closed meetings procedures; certification of proceedings.

82 A. No closed meeting shall be held unless the public body proposing to convene such meeting has
83 taken an affirmative recorded vote in an open meeting approving a motion that (i) identifies the subject
84 matter; (ii) states the purpose of the meeting and (iii) makes specific reference to the applicable
85 exemption from open meeting requirements provided in § 2.2-3707 or subsection A of § 2.2-3711. The
86 matters contained in such motion shall be set forth in detail in the minutes of the open meeting. A
87 general reference to the provisions of this chapter, the authorized exemptions from open meeting
88 requirements, or the subject matter of the closed meeting shall not be sufficient to satisfy the
89 requirements for holding a closed meeting.

90 B. The notice provisions of this chapter shall not apply to closed meetings of any public body held
91 solely for the purpose of interviewing candidates for the position of chief administrative officer. Prior to
92 any such closed meeting for the purpose of interviewing candidates, the public body shall announce in
93 an open meeting that such closed meeting shall be held at a disclosed or undisclosed location within
94 fifteen days thereafter.

95 C. The public body holding a closed meeting shall restrict its discussion during the closed meeting
96 only to those matters specifically exempted from the provisions of this chapter and identified in the
97 motion required by subsection A.

98 D. At the conclusion of any closed meeting, the public body holding such meeting shall immediately
99 reconvene in an open meeting and shall take a roll call or other recorded vote to be included in the
100 minutes of that body, certifying that to the best of each member's knowledge (i) only public business
101 matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public
102 business matters as were identified in the motion by which the closed meeting was convened were
103 heard, discussed or considered in the meeting by the public body. Any member of the public body who
104 believes that there was a departure from the requirements of clauses (i) and (ii), shall so state prior to
105 the vote, indicating the substance of the departure that, in his judgment, has taken place. The statement
106 shall be recorded in the minutes of the public body.

107 E. Failure of the certification required by subsection D to receive the affirmative vote of a majority
108 of the members of the public body present during a meeting shall not affect the validity or
109 confidentiality of such meeting with respect to matters considered therein in compliance with the
110 provisions of this chapter. The recorded vote and any statement made in connection therewith, shall
111 upon proper authentication, constitute evidence in any proceeding brought to enforce the provisions of
112 this chapter.

113 F. A public body may permit nonmembers to attend a closed meeting if such persons are deemed
114 necessary or if their presence will reasonably aid the public body in its consideration of a topic that is a
115 subject of the meeting.

116 G. Except as specifically authorized by law, in no event may any public body take action on matters
117 discussed in any closed meeting, except at an open meeting for which notice was given as required by
118 § 2.2-3707.

119 H. Minutes may be taken *shall be recorded by audio or audio/visual means* during any closed
120 meetings *meeting* of a public body, but shall not be required. Such minutes shall not be subject to

121 mandatory public disclosure. *Where an action is brought pursuant to § 2.2-3713, a court may conduct*
122 *an in camera review of the closed meeting recording to determine what portions, if any, shall be made*
123 *available to the parties for use as evidence in the proceeding. The court may, for purposes of discovery,*
124 *redact from the closed meeting recording any information protected by law. The provisions of this*
125 *subsection shall not be construed to supersede the privacy or confidentiality provisions of state or*
126 *federal law. Closed meeting recordings shall be kept by the public body for two years from the date of*
127 *such meeting.]*

128 § 30-179. Powers and duties of the Council.

129 The Council shall:

130 1. Furnish, upon request, advisory opinions or guidelines, and other appropriate information regarding
131 the Freedom of Information Act (§ 2.2-3700 et seq.) to any person or agency of state or local
132 government, in an expeditious manner;

133 2. Conduct training seminars and educational programs for the members and staff of public bodies
134 and other interested persons on the requirements of the Freedom of Information Act (§ 2.2-3700 et seq.);

135 3. Publish *such* educational materials as it deems appropriate on the provisions of the Freedom of
136 Information Act (§ 2.2-3700 et seq.);

137 4. Request from any agency of state or local government such assistance, services and information as
138 will enable the Council to effectively carry out its responsibilities. Information provided to the Council
139 by an agency of state or local government shall not be released to any other party unless authorized by
140 such agency; and

141 5. *Assist in the development and implementation of the provisions of § 2.2-3704.1; and*

142 6. Report annually on or before December 1 of each year on its activities and findings regarding the
143 Freedom of Information Act, including recommendations for changes in the law, to the Governor and
144 the General Assembly.

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