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SENATE BILL NO. 336

Senate Amendments in [] - February 1, 2018

A *BILL to amend and reenact §§ 2.2-3707 and 23.1-1303 of the Code of Virginia, relating to the Freedom of Information Act; right to speak at open meetings.*

Patrons Prior to Engrossment—Senator Peake; Delegate: Kory

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:**1. That §§ 2.2-3707 and 23.1-1303 of the Code of Virginia are amended and reenacted as follows:****§ 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 §§ 2.2-3707.01 and 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, 2.2-3708.1 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:

1. Posting such notice on its official public government website, if any;

2. Placing such notice in a prominent public location at which notices are regularly posted; and

3. Placing such notice at the office of the clerk of the public body or, in the case of a public body that has no clerk, at the office of the chief administrator.

All state public bodies subject to the provisions of this chapter shall also post notice of their meetings on a central, publicly available electronic calendar maintained by the Commonwealth. Publication of meeting notices by electronic means by other public bodies shall be encouraged.

The notice shall be posted at least three working days prior to the meeting.

The notice shall state the approximate point during the meeting when public comment will be received.

D. Notice, reasonable under the circumstance, of special, emergency, or continued meetings shall be given contemporaneously with the notice provided to the 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 the proposed agenda and 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. ~~The proposed agendas for meetings of state public bodies where at least one member has been 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.~~

G. Every public body shall afford an opportunity for public comment during any open meeting. *The public body may choose the approximate point during the meeting when public comment will be received. The public body may adopt reasonable rules governing the public comment portion of the meeting, including reasonable restrictions on the time, place, and manner of public comment. [Such rules shall not limit public comment to only the submission of written comments.]*

H. Any person may photograph, film, record or otherwise reproduce any portion of a meeting required to be open. The public body conducting the meeting may adopt rules governing the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to prevent interference with the proceedings, but shall not prohibit or otherwise prevent any person from photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be open. No public body shall conduct a meeting required to be open in any building or facility where such recording devices are prohibited.

I. Minutes shall be recorded at all open meetings. However, minutes shall not be required to be taken at deliberations of (i) standing and other committees of the General Assembly; (ii) legislative interim study commissions and committees, including the Virginia Code Commission; (iii) study committees or commissions appointed by the Governor; or (iv) study commissions or study committees, or any other committees or subcommittees appointed by the governing bodies or school boards of

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counties, cities and towns, except where the membership of any such commission, committee or subcommittee includes a majority of the governing body of the county, city or town or school board.

Minutes, including draft minutes, and all other records of open meetings, including audio or audio/visual records shall be deemed public records and subject to the provisions of this chapter.

Minutes shall be in writing and shall include ~~(i)~~ (a) the date, time, and location of the meeting; ~~(ii)~~ (b) the members of the public body recorded as present and absent; and ~~(iii)~~ (c) a summary of the discussion on matters proposed, deliberated or decided, and a record of any votes taken. In addition, for electronic communication meetings conducted in accordance with § 2.2-3708, minutes of state public bodies shall include ~~(a)~~ (1) the identity of the members of the public body at each remote location identified in the notice who participated in the meeting through electronic communications means, ~~(b)~~ (2) the identity of the members of the public body who were physically assembled at the primary or central meeting location, and ~~(c)~~ (3) the identity of the members of the public body who were not present at the locations identified in clauses ~~(a)~~ (1) and ~~(b)~~ (2) but who monitored such meeting through electronic communications means.

§ 23.1-1303. Governing boards; duties.

A. For purposes of this section, "intellectual property" means (i) a potentially patentable machine, article of manufacture, composition of matter, process, or improvement in any of those; (ii) an issued patent; (iii) a legal right that inheres in a patent; or (iv) anything that is copyrightable.

B. The governing board of each public institution of higher education shall:

1. Adopt and post conspicuously on its website bylaws for its own governance, including provisions that (i) establish the requirement of transparency, to the extent required by law, in all board actions; (ii) describe the board's obligations under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), as set forth in subdivision B 10 of § 23.1-1301, including the requirements that (a) the board record minutes of each open meeting and post the minutes on the board's website, in accordance with subsection ~~H~~ I of § 2.2-3707 and § 2.2-3707.1, (b) discussions and actions on any topic not specifically exempted by § 2.2-3711 be held in an open meeting, (c) the board give public notice of all meetings, in accordance with subsection C of § 2.2-3707, and (d) any action taken in a closed meeting be approved in an open meeting before it can have any force or effect, in accordance with subsection B of § 2.2-3711; and (iii) require that the board invite the Attorney General's appointee or representative to all meetings of the board, executive committee, and board committees;

2. Establish regulations or institution policies for the acceptance and assistance of students that include provisions (i) that specify that individuals who have knowingly and willfully failed to meet the federal requirement to register for the selective service are not eligible to receive any state direct student assistance, (ii) that specify that the accreditation status of a public high school in the Commonwealth shall not be considered in making admissions determinations for students who have earned a diploma pursuant to the requirements established by the Board of Education, and (iii) relating to the admission of certain graduates of comprehensive community colleges as set forth in § 23.1-907;

3. Assist the Council in enforcing the provisions relating to eligibility for financial aid;

4. Notwithstanding any other provision of state law, establish policies and procedures requiring the notification of the parent of a dependent student when such student receives mental health treatment at the institution's student health or counseling center and such treatment becomes part of the student's educational record in accordance with the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and may be disclosed without prior consent as authorized by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations (34 C.F.R. Part 99). Such notification shall only be required if it is determined that there exists a substantial likelihood that, as a result of mental illness the student will, in the near future, (i) cause serious physical harm to himself or others as evidenced by recent behavior or any other relevant information or (ii) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs. However, notification may be withheld if any person licensed to diagnose and treat mental, emotional, or behavioral disorders by a health regulatory board within the Department of Health Professions who is treating the student has made a part of the student's record a written statement that, in the exercise of his professional judgment, the notification would be reasonably likely to cause substantial harm to the student or another person. No public institution of higher education or employee of a public institution of higher education making a disclosure pursuant to this subsection is civilly liable for any harm resulting from such disclosure unless such disclosure constitutes gross negligence or willful misconduct by the institution or its employees;

5. Establish policies and procedures requiring the release of the educational record of a dependent student, as defined by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g), to a parent at his request;

6. Establish programs to seek to ensure that all graduates have the technology skills necessary to compete in the twenty-first century and that all students matriculating in teacher-training programs receive instruction in the effective use of educational technology;

122 7. Establish policies for the discipline of students who participate in varsity intercollegiate athletics,
123 including a provision requiring an annual report by the administration of the institution to the governing
124 board regarding enforcement actions taken pursuant to such policies;

125 8. In addition to all meetings prescribed in Chapters 14 (§ 23.1-1400 et seq.) through 29 (§ 23.1-2900
126 et seq.), meet with the chief executive officer of the institution at least once annually, in a closed
127 meeting pursuant to subdivision A 1 of § 2.2-3711 and deliver an evaluation of the chief executive
128 officer's performance. Any change to the chief executive officer's employment contract during any such
129 meeting or any other meeting of the board shall be made only by a vote of the majority of the board's
130 members;

131 9. If human research, as defined in § 32.1-162.16, is conducted at the institution, adopt regulations
132 pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions of Chapter
133 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. Such regulations shall require the human
134 research committee to submit to the Governor, the General Assembly, and the chief executive officer of
135 the institution or his designee at least annually a report on the human research projects reviewed and
136 approved by the committee and require the committee to report any significant deviations from approved
137 proposals;

138 10. Submit the annual financial statements for the fiscal year ending the preceding June 30 and the
139 accounts and status of any ongoing capital projects to the Auditor of Public Accounts for the audit of
140 such statements pursuant to § 30-133;

141 11. No later than December 1 of each year, report to the Council (i) the value of investments as
142 reflected on the Statement of Net Position as of June 30 of the previous fiscal year, excluding any funds
143 derived from endowment donations, endowment income, or other private philanthropy; (ii) the cash
144 earnings on such balances in the previous fiscal year; and (iii) the use of the cash earnings on such
145 balances. In the event that the commitment of any such investment earnings spans more than one fiscal
146 year, the report shall reflect the commitments made in each future fiscal year. The reports of the Boards
147 of Visitors of Virginia Commonwealth University and the University of Virginia shall exclude the value
148 of and earnings on any investments held by the Virginia Commonwealth University Health System
149 Authority and the University of Virginia Medical Center, respectively. As used in this subdivision,
150 "investments" includes all short-term, long-term, liquid, and illiquid Statement of Net Position accounts,
151 and subaccounts thereof, in which moneys have been invested in securities.

152 12. Submit to the General Assembly and the Governor an annual executive summary of its interim
153 activity and work no later than the first day of each regular session of the General Assembly. The
154 executive summary shall be submitted as provided in the procedures of the Division of Legislative
155 Automated Systems for the processing of legislative documents and reports and shall be posted on the
156 General Assembly's website;

157 13. Make available to any interested party upon request a copy of the portion of the most recent
158 report of the Uniform Crime Reporting Section of the Department of State Police entitled "Crime in
159 Virginia" pertaining to institutions of higher education;

160 14. Adopt policies or institution regulations regarding the ownership, protection, assignment, and use
161 of intellectual property and provide a copy of such policies or institution regulations to the Governor
162 and the Joint Commission on Technology and Science. All employees, including student employees, of
163 public institutions of higher education are bound by the intellectual property policies or institution
164 regulations of the institution employing them; and

165 15. Adopt policies that are supportive of the intellectual property rights of matriculated students who
166 are not employed by such institution.