



Virginia Freedom of Information Advisory Council

June 6, 2022, at 1:00 p.m.

Senate Room A, Pocahontas Building

foiacouncil.dls.virginia.gov

The Virginia Freedom of Information Advisory Council (the Council) met with Senator Mamie E. Locke, chair, presiding.¹ The meeting began with introductions and opening remarks followed by a recap of FOIA and related access bills from the 2022 Session of the General Assembly, and public comment was heard. Materials presented at the meeting, as well as all written public comments, are accessible through the Council's [Meetings webpage](#).

Presentation: Recap of FOIA and Related Access Bills from 2022 Session

Council Staff

Staff provided the Council with a summarized version of the 2022 FOIA Legislative Update. The 2022 Session of the General Assembly passed one bill that was recommended by the Council: SB 152 (Locke) (adding a definition of "official public government website"). The General Assembly also passed HB 444 (Bennett-Parker) (addressing electronic meetings), which, in its introduced form, was substantially similar but not identical to legislation recommended by the Council. Two other bills were recommended by the Council but did not pass: HB 493 (Mullin) (addressing the required release of law-enforcement disciplinary records) and HB 599 (Roem) (addressing charges for production of public records).

Of the 12 bills that amend FOIA, one bill adds a new records exemption in FOIA as follows:

- Provides that public agencies shall not request personal donor information, defined in the bill, from (i) any individual or any entity organized under § 501(c) of the Internal Revenue Code or (ii) any bidder, offeror, or contractor of an agency. The bill prohibits such public agencies from disclosing personal information without the express, written permission of every individual who is identifiable from the potential release of such personal information, including individuals identifiable as members, supporters, or volunteers of, or donors to, the agency. The bill exempts the Campaign Finance Disclosure Act of 2006 from the requirements that public agencies protect personal information and refrain from requesting personal information. HB 970 amending § 2.2-3705.1.

One bill adds a new section to FOIA as follows:

- Requires, with certain exceptions outlined in the bill, any local public body subject to the provisions of FOIA to post meeting minutes on its official public government website, if

¹ **Members Present:** Senator Mamie E. Locke (chair), Delegate Marcus B. Simon (vice-chair), Senator Richard H. Stuart, Lee Bujakowski, Matthew A. Conrad, Stephanie Hamlett, Lola Rodriguez Perkins, Chidi I. James, Bruce Potter, Cullen D. Seltzer, Sandra G. Treadway, and Amigo Wade. Note that Senator Stuart and Mr. Seltzer participated electronically. Senator Stuart participated from his home office in Montross, Virginia, due to a scheduling conflict (personal matter). Mr. Seltzer participated from his home in Richmond, Virginia, because he was caring for a family member who was ill. The meeting was livestreamed on the Senate of Virginia's website and a video recording of the meeting is available on the Council's [Meetings webpage](#).

Members Absent: Delegate William Wampler, III, and William D. Coleburn

any, within seven working days of final approval of the minutes. The bill provides that if a local public body does not own or maintain an official public government website, it shall make copies of all meeting minutes available no later than seven working days after the conclusion of a meeting at a prominent public location in which meeting notices are regularly posted, 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. HB 150 adding § 2.2-3707.2.

Eight bills amend existing provisions of FOIA as follows:

- Provides that a public body subject to FOIA shall make all reasonable efforts to supply records requested by a citizen at the lowest possible cost; however, no such public body shall charge for the provision of certain scholastic records, outlined in the bill. The bill requires a public body, prior to conducting a search for records, to notify the requester in writing of the public body's right to make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for requested records and inquire of the requester whether he would like to request a cost estimate in advance of the supplying of the requested records. Finally, the bill provides that any costs incurred by a public body in estimating the cost of supplying requested records shall be applied toward the overall charges to be paid by the requester for the supplying of such records. HB 307 amending §§ 2.2-3704 and 2.2-3704.1.
- Authorizes the Board of Directors of the Virginia Alcoholic Beverage Control Authority (the Board) to issue a mixed beverage casino license. The issuance of such license is limited to a mixed beverage casino licensee owned by a casino operator licensed under Virginia law. The bill provides for the sale and service of alcoholic beverages for on-premises consumption in areas designated by the Board during all hours of operation of the mixed beverage casino licensee and authorizes the licensee to provide gifts of alcoholic beverages to patrons and establish loyalty or reward credit programs under certain conditions. In addition, the bill provides that a mixed beverage restaurant licensee located on the premises of a casino gaming establishment may sell alcoholic beverages for on-premises consumption on the licensed premises of the restaurant during all hours of operation of the mixed beverage restaurant licensee and that any alcoholic beverages purchased from a restaurant on the premises of a casino gaming establishment may be taken onto the premises of the mixed beverage casino licensee and possessed and consumed in areas of the establishment as designated by the Board. Under the bill, a mixed beverage restaurant licensee that is located on the premises of and operated by a casino gaming establishment and holds a valid mixed beverage restaurant license issued by the Board prior to July 1, 2022, is authorized to operate with the privileges of a mixed beverage casino license as created by the bill until the casino gaming establishment at which the restaurant is located is issued a mixed beverage casino license or July 1, 2023, whichever occurs first. The Board may promulgate any regulations that it deems necessary for implementing the provisions of the bill no later than October 1, 2022. The initial adoption of regulations is exempt from the Administrative Process Act, except that the Board shall provide an opportunity for public comment on the regulations prior to adoption. The bill also (i) revises the definition of "gross receipts" to include electronic credits and electronic cash and to exclude the cash value of promotions or credits under certain conditions and uncollectable counter checks; (ii) defines and authorizes the use of counter checks and prepaid access instruments; (iii) authorizes wagers to be conducted



using electronic credits and electronic cash; and (iv) excludes conviction of misdemeanor possession of marijuana as a disqualifier for the issuance of a service permit by the Virginia Lottery. HB 455 and SB 519 amending § 2.2-3705.3 and various other sections in Titles 4.1 and 58.1. *(Note: Amends an existing FOIA exemption for information relating to investigations of applicants for licenses and permits, and of all licensees and permittees made by or submitted to certain public bodies.)*

- Changes the Charitable Gaming Board (the Board) from a policy board to an advisory board in the executive branch of state government, decreases the membership from 11 members to nine members, and moves the power and duty to promulgate regulations related to charitable gaming in the Commonwealth from the Board to the Department of Agriculture and Consumer Services (the Department). The bill provides that (i) the current regulations enacted by the Board shall be administered by the Department and remain in full force and effect until the Department promulgates new regulations pursuant to this bill and (ii) notwithstanding clause (i), the regulations promulgated by the Board regarding Texas Hold'em poker games and tournaments, which became effective on March 23, 2021, and were rescinded by the General Assembly pursuant to Item 105 of Chapter 552 of the Acts of Assembly of 2021, Special Session I, shall not take effect, but the Department shall promulgate regulations regarding Texas Hold'em poker games and tournaments consistent with the provisions of Chapter 982 of the Acts of Assembly of 2020 and pursuant to the provisions of the Administrative Process Act. The bill contains technical amendments. HB 765 and SB 402 amending § 2.2-3705.6 and various other sections in Titles 2.2, 3.2, and 18.2. *(Note: Contains a technical amendment to an existing exemption for certain information of a proprietary or confidential nature furnished by a supplier or manufacturer of charitable gaming supplies.)*
- Provides that individual votes of the members of the Virginia Parole Board are public records and subject to the provisions of FOIA. HB 1303 and SB 5 amending § 2.2-3703.
- Defines "official public government website" as it applies to FOIA and the Council as any Internet site controlled by a public body and used, among any other purposes, to post required notices and other content pursuant to FOIA on behalf of the public body. This bill is a recommendation of the Council. SB 152 amending §§ 2.2-3701 and 30-179.

One bill amends existing provisions and adds a new section in FOIA as follows:

- Amends existing provisions concerning electronic meetings by keeping the provisions for electronic meetings held in response to declared states of emergency, repealing the provisions that are specific to regional and state public bodies, and allowing certain public bodies to conduct all-virtual public meetings where all of the members who participate do so remotely and that the public may access through electronic communications means. The bill excepts local governing bodies, local school boards, planning commissions, architectural review boards, zoning appeals boards, and any board with the authority to deny, revoke, or suspend a professional or occupational license from the provisions that allow public bodies to conduct all-virtual public meetings. Definitions, procedural requirements, and limitations for all-virtual public meetings are set forth in the bill, along with technical amendments. The bill has a delayed effective date of September 1, 2022. HB 444 amending §§ 2.2-3701, 2.2-3707, 2.2-3707.01, 2.2-3708.2, and 2.2-3714 and adding §



2.2-3708.3; the bill also amends various sections in Titles 2.2, 10.1, 15.2, 23.1, 30, and 62.1.

One bill amends existing provisions and adds a new section in Title 8.01:

- Provides that (i) criminal investigative files relating to a criminal investigation or proceeding that is not ongoing are excluded from the mandatory disclosure provisions of FOIA, though they may be disclosed by the custodian of such records to certain individuals except as otherwise provided in the bill, and (ii) with the exception of disclosure to an attorney representing a petitioner or inspection by an attorney or a person proceeding pro se in a petition for a writ of habeas corpus or writ of actual innocence or any other federal or state post-conviction proceeding or pardon, no criminal investigative file or portion thereof shall be disclosed to any requester except (a) the victim; (b) the victim's immediate family members, if the victim is deceased and the immediate family member to which the records are to be disclosed is not a person of interest or a suspect in the criminal investigation; or (c) the victim's parent or guardian, if the victim is a minor and the parent or guardian is not a person of interest or a suspect in the criminal investigation or proceeding, unless the public body has made reasonable efforts to notify any such individual of the request for such information. Upon receipt of notice that a public body has received a request for criminal investigative files, such persons shall have 14 days to file in an appropriate court for an injunction to prevent disclosure of the records and the time period within which the public body has to respond to the underlying request shall be tolled pending the notification process and any subsequent disposition by the court. The bill requires the court to consider certain information in making its determination and provides that a public body shall be prohibited from responding to the request until at least 14 days have passed from the time notice was received by any such individual listed in clauses (a), (b), or (c) and shall not disclose any criminal investigative files if the court awards an injunction. HB 734 amending § 2.2-3706.1 and adding § 8.01-622.2.

For further detail, please see the full 2022 Legislative Update posted on the Council's [homepage](#).²

Presentation: HB 444 (Bennett-Parker) Workgroup Progress Report *Council Staff*

Staff provided an update on the progress of the HB 444 Workgroup. The workgroup was directed to develop recommendations for best practices for public bodies holding all-virtual public meetings. The workgroup met on May 6 and May 24, 2022, to discuss the following topics: "how to take public comment virtually" and "the proper use of video by public body members." Staff stated that the workgroup will meet another time before the August 1 deadline if the need arises.

Staff noted that once the workgroup has completed its work on best practices recommendations, the recommendations will be incorporated into a revised Electronic Meetings Guide for 2022 that reflects the amendments made by HB 444. A Best Practices Summary DRAFT that describes the work and recommendations of the workgroup is available on the Council's [Meetings webpage](#).

² Note that a draft version of the 2022 Legislative Update is posted on the Council's [Meetings webpage](#) and was available at the time of the meeting. The final version has subsequently been posted to the Council's [homepage](#), and reflects updates made after the June 1 meeting of the 2022 Special Session that were not available when the draft version was prepared for this meeting.



Public Comment

Megan Rhyne, Virginia Coalition for Open Government (VCOG), stated that the Uniform Law Commission (ULC) has drafted a model law for all virtual meetings during emergencies and is currently taking comments from various groups. Mr. Wade stated that the ULC commissioners will be meeting June 28, 2022, and will have their national meeting the second week in July. From there, the Virginia delegation will decide whether they will be recommending legislation to the General Assembly in 2023. Ms. Rhyne also spoke on the importance of legislative members being involved in the subcommittee process.

Next Meetings

Senator Locke directed staff to poll members of the Council about future meeting dates for the Council. The HB 980 Workgroup is scheduled to meet on July 26, 2022, at 10 a.m. in Subcommittee Room # 2 in the Pocahonta Building.

For more information, see the [Council's website](#) or contact the Division of Legislative Services staff:

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