

1 **H. B. 2884**

2
3 (By Delegates Armstead, Kump, A. Evans, Romine,
4 D. Evans, Cowles, Walters, Espinosa, Shott,
5 J. Nelson and McCuskey)

6 [Introduced March 8, 2013; referred to the
7 Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

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9
10 A BILL to amend and reenact §29B-1-2 and §29B-1-4 of the Code of
11 West Virginia, 1931, as amended, all relating to the Freedom
12 of Information Act; redefining the term "public record"; and
13 limiting the exemption for internal memoranda or letters
14 received or prepared by any public body.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §29B-1-2 and §29B-1-4 of the Code of West Virginia, 1931,
17 as amended, be amended and reenacted, all to read as follows:

18 **ARTICLE 1. PUBLIC RECORDS.**

19 **§29B-1-2. Definitions.**

20 As used in this article:

21 (1) "Custodian" means the elected or appointed official
22 charged with administering a public body.

23 (2) "Person" includes any natural person, corporation,
24 partnership, firm or association.

1 (3) "Public body" means every state officer, agency,
2 department, including the executive, legislative and judicial
3 departments, division, bureau, board and commission; every county
4 and city governing body, school district, special district,
5 municipal corporation, and any board, department, commission
6 council or agency thereof; and any other body which is created by
7 state or local authority or which is primarily funded by the state
8 or local authority.

9 (4) "Public record" includes any writing containing
10 information ~~relating~~ prepared or received by a public body, the
11 content or context of which, judged either by content or context
12 relates to the conduct of the public's business. ~~prepared, owned~~
13 ~~and retained by a public body.~~

14 (5) "Writing" includes any books, papers, maps, photographs,
15 cards, tapes, recordings or other documentary materials regardless
16 of physical form or characteristics.

17 **§29B-1-4. Exemptions.**

18 (a) There is a presumption of public accessibility to all
19 public records subject only to exemptions of the following
20 categories of information which are specifically exempt from
21 disclosure under the provisions of this article:

22 (1) Trade secrets, as used in this section, which may include,
23 but are not limited to, any formula, plan pattern, process, tool,
24 mechanism, compound, procedure, production data or compilation of

1 information which is not patented which is known only to certain
2 individuals within a commercial concern who are using it to
3 fabricate, produce or compound an article or trade or a service or
4 to locate minerals or other substances, having commercial value,
5 and which gives its users an opportunity to obtain business
6 advantage over competitors;

7 (2) Information of a personal nature such as that kept in a
8 personal, medical or similar file, if the public disclosure ~~thereof~~
9 of the information would constitute an unreasonable invasion of
10 privacy, unless the public interest by clear and convincing
11 evidence requires disclosure in the particular instance: *Provided,*
12 That ~~nothing in this article shall be construed as precluding~~ does
13 not preclude an individual from inspecting or copying his or her
14 own personal, medical or similar file;

15 (3) Test questions, scoring keys and other examination data
16 used to administer a licensing examination, examination for
17 employment or academic examination;

18 (4) Records of law-enforcement agencies that deal with the
19 detection and investigation of crime and the internal records and
20 notations of such law-enforcement agencies which are maintained for
21 internal use in matters relating to law enforcement;

22 (5) Information specifically exempted from disclosure by
23 statute;

24 (6) Records, archives, documents or manuscripts describing the

1 location of undeveloped historic, prehistoric, archaeological,
2 paleontological and battlefield sites or constituting gifts to any
3 public body upon which the donor has attached restrictions on usage
4 or the handling of which could irreparably damage ~~such~~ the record,
5 archive, document or manuscript;

6 (7) Information contained in or related to examination,
7 operating or condition reports prepared by, or on behalf of, or for
8 the use of any agency responsible for the regulation or supervision
9 of financial institutions, except those reports which are by law
10 required to be published in newspapers;

11 (8) Internal memoranda or letters received or prepared by any
12 public body to the extent that the internal memoranda or letters
13 contain information which is specifically exempt from disclosure
14 under any of the other subdivisions of this section;

15 (9) Records assembled, prepared or maintained to prevent,
16 mitigate or respond to terrorist acts or the threat of terrorist
17 acts, the public disclosure of which threaten the public safety or
18 the public health;

19 (10) Those portions of records containing specific or unique
20 vulnerability assessments or specific or unique response plans,
21 data, databases and inventories of goods or materials collected or
22 assembled to respond to terrorist acts; and communication codes or
23 deployment plans of law enforcement or emergency response
24 personnel;

1 (11) Specific intelligence information and specific
2 investigative records dealing with terrorist acts or the threat of
3 a terrorist act shared by and between federal and international
4 law-enforcement agencies, state and local law enforcement and other
5 agencies within the Department of Military Affairs and Public
6 Safety;

7 (12) National security records classified under federal
8 executive order and not subject to public disclosure under federal
9 law that are shared by federal agencies and other records related
10 to national security briefings to assist state and local government
11 with domestic preparedness for acts of terrorism;

12 (13) Computing, telecommunications and network security
13 records, passwords, security codes or programs used to respond to
14 or plan against acts of terrorism which may be the subject of a
15 terrorist act;

16 (14) Security or disaster recovery plans, risk assessments,
17 tests or the results of those tests;

18 (15) Architectural or infrastructure designs, maps or other
19 records that show the location or layout of the facilities where
20 computing, telecommunications or network infrastructure used to
21 plan against or respond to terrorism are located or planned to be
22 located;

23 (16) Codes for facility security systems; or codes for secure
24 applications for ~~such~~ facilities referred to in subdivision (15) of

1 this subsection;

2 (17) Specific engineering plans and descriptions of existing
3 public utility plants and equipment;

4 (18) Customer proprietary network information of other
5 telecommunications carriers, equipment manufacturers and individual
6 customers, consistent with 47 U.S.C. §222; and

7 (19) Records of the Division of Corrections, Regional Jail and
8 Correctional Facility Authority and the Division of Juvenile
9 Services relating to design of corrections, jail and detention
10 facilities owned or operated by the agency, and the policy
11 directives and operational procedures of personnel relating to the
12 safe and secure management of inmates or residents, that if
13 released, could be ~~utilized~~ used by an inmate or resident to escape
14 a facility, or to cause injury to another inmate, resident or to
15 facility personnel.

16 (b) As used in subdivisions (9) through (16), inclusive,
17 subsection (a) of this section, the term "terrorist act" means an
18 act that is likely to result in serious bodily injury or damage to
19 property or the environment and is intended to:

20 (1) Intimidate or coerce the civilian population;

21 (2) Influence the policy of a branch or level of government by
22 intimidation or coercion;

23 (3) Affect the conduct of a branch or level of government by
24 intimidation or coercion; or

1 (4) Retaliate against a branch or level of government for a
2 policy or conduct of the government.

3 (c) ~~Nothing in~~ The provisions of subdivisions (9) through
4 (16), inclusive, subsection (a) of this section ~~should be construed~~
5 to do not make subject to the provisions of this chapter any
6 evidence of an immediate threat to public health or safety
7 unrelated to a terrorist act or the threat ~~thereof~~ of a terrorist
8 act which comes to the attention of a public entity in the course
9 of conducting a vulnerability assessment response or similar
10 activity.

NOTE: The purpose of this bill is to amend certain provisions of the Freedom of Information Act. The bill amends the definition of "public record" to include only records of a public body, the content or context of which relates to the conduct of the public's business. The bill also limits the exemption for internal memoranda or letters of a public body to include only the content which contains information specifically exempt under another exemption.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.