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## FOIA bill reading Monday

### Will help clarify 'public record'

BY DAVID BEARD The Dominion Post

CHARLESTON — A public information bill sparked largely by an editorial in The Dominion Post will be up for its first reading on the House of Delegates floor, Monday.

Delegate Barbara Evans Fleischauer, D-Monongalia, said she initiated the bill after reading a Nov. 15, 2009, editorial in the Morgantown newspaper.

The editorial commented on a 2009 state Supreme Court ruling that determined e-mails between former Supreme Court Justice Elliott "Spike" Maynard and then-Massey Energy CEO Don Blankenship were not public records even though they were generated on publicly owned property and concerned Maynard's run for public office.

The court determined that content prevailed over context — that the e-mails weren't connected to public business or Maynard's duties as justice, according to news reports at the time.

The newspaper's editorial said the relationship between the two men — Blankenship has financially supported Maynard's campaigns for office — should have factored into the ruling. It did agree with the court's recommendation that the Legislature should tweak public records law to account for context as well as content.

So that's what Fleischauer did, she said, based on the "extra impetus" supplied by the commentary. She tried the bill last year, but it died after an amendment was tacked on.

This time, it passed through the Judiciary Committee on Friday and goes to the floor Monday.

The bill changes just one sentence in code section 29B-1-2, pertaining to public records defined in the Freedom of Information Act.

The existing wording is: "'Public record' includes any writing containing information relating to the conduct of the public's business."

The new sentence would say, " 'Public record' includes any writing containing information prepared or received by a public body, the content or context of which, judged either by its content or context, relates to the conduct of the public's business."

Among the bill's sponsors are Delegates Mike Caputo, D-Marion, and Charlene Marshall, DMonongalia. They could not be reached for comment in time for this report.

