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## HOUSE BILL NO. 2321

Offered January 18, 2013

A BILL to amend and reenact §§ 2.2-3701 and 2.2-3713 of the Code of Virginia, relating to the Virginia Freedom of Information Act; application to the State Corporation Commission.

Patron—Surovell

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

- 1. That §§ 2.2-3701 and 2.2-3713 of the Code of Virginia are amended and reenacted as follows:**  
**§ 2.2-3701. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Closed meeting" means a meeting from which the public is excluded.

"Electronic communication" means any audio or combined audio and visual communication method.

"Emergency" means an unforeseen circumstance rendering the notice required by this chapter impossible or impracticable and which circumstance requires immediate action.

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. The gathering of employees of a public body shall not be deemed a "meeting" subject to the provisions of this chapter.

"Open meeting" or "public meeting" means a meeting at which the public may be present.

"Public body" means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of public institutions of higher education; *the State Corporation Commission*; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records.

"Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. Records that are not prepared for or used in the transaction of public business are not public records.

"Regional public body" means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, whose members are appointed by the participating local governing bodies, and such unit includes two or more counties or cities.

"Scholastic records" means those records containing information directly related to a student or an applicant for admission and maintained by a public body that is an educational agency or institution or by a person acting for such agency or institution.

**§ 2.2-3713. Proceedings for enforcement of chapter.**

A. Any person, including the attorney for the Commonwealth acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause. Such petition may be brought in the name of the person notwithstanding that a request for public records was made by the person's attorney in his representative capacity. Venue for the petition shall be addressed as follows:

1. In a case involving a local public body, to the general district court or circuit court of the county or city from which the public body has been elected or appointed to serve and in which such rights and

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59 privileges were so denied;

60 2. In a case involving a regional public body, to the general district or circuit court of the county or  
61 city where the principal business office of such body is located; ~~and~~

62 3. ~~In~~ *Except as provided in subdivision 4, in a case involving a board, bureau, commission, authority,*  
63 *district, institution, or agency of the state government, including a public institution of higher education,*  
64 *or a standing or other committee of the General Assembly, to the general district court or the circuit*  
65 *court of the residence of the aggrieved party or of the City of Richmond; and*

66 4. *In a case involving the State Corporation Commission, to the Supreme Court in accordance with*  
67 *Article IX, Section 3 of the Constitution of Virginia.*

68 B. In any action brought before a general district court, a corporate petitioner may appear through its  
69 officer, director or managing agent without the assistance of counsel, notwithstanding any provision of  
70 law or Rule of the Supreme Court of Virginia to the contrary.

71 C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall be  
72 heard within seven days of the date when the same is made, provided the party against whom the  
73 petition is brought has received a copy of the petition at least three working days prior to filing. The  
74 hearing on any petition made outside of the regular terms of the circuit court of a locality that is  
75 included in a judicial circuit with another locality or localities shall be given precedence on the docket  
76 of such court over all cases that are not otherwise given precedence by law.

77 D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights  
78 and privileges conferred by this chapter. A single instance of denial of the rights and privileges  
79 conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the  
80 denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover  
81 reasonable costs, including costs and reasonable fees for expert witnesses, and attorneys' fees from the  
82 public body if the petitioner substantially prevails on the merits of the case, unless special circumstances  
83 would make an award unjust. In making this determination, a court may consider, among other things,  
84 the reliance of a public body on an opinion of the Attorney General or a decision of a court that  
85 substantially supports the public body's position.

86 E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of  
87 proof to establish an exemption by a preponderance of the evidence. Any failure by a public body to  
88 follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

89 F. Failure by any person to request and receive notice of the time and place of meetings as provided  
90 in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred by this  
91 chapter.